

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

JOINT APPENDIX

230

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals
for the District of Columbia Circuit

No. 21,483 FILED JUN 24 1968

Nathan J. Paulson
CLERK

THE FOUNDING CHURCH OF SCIENTOLOGY OF
WASHINGTON, D.C., et al,

Appellants,

v.

UNITED STATES OF AMERICA,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

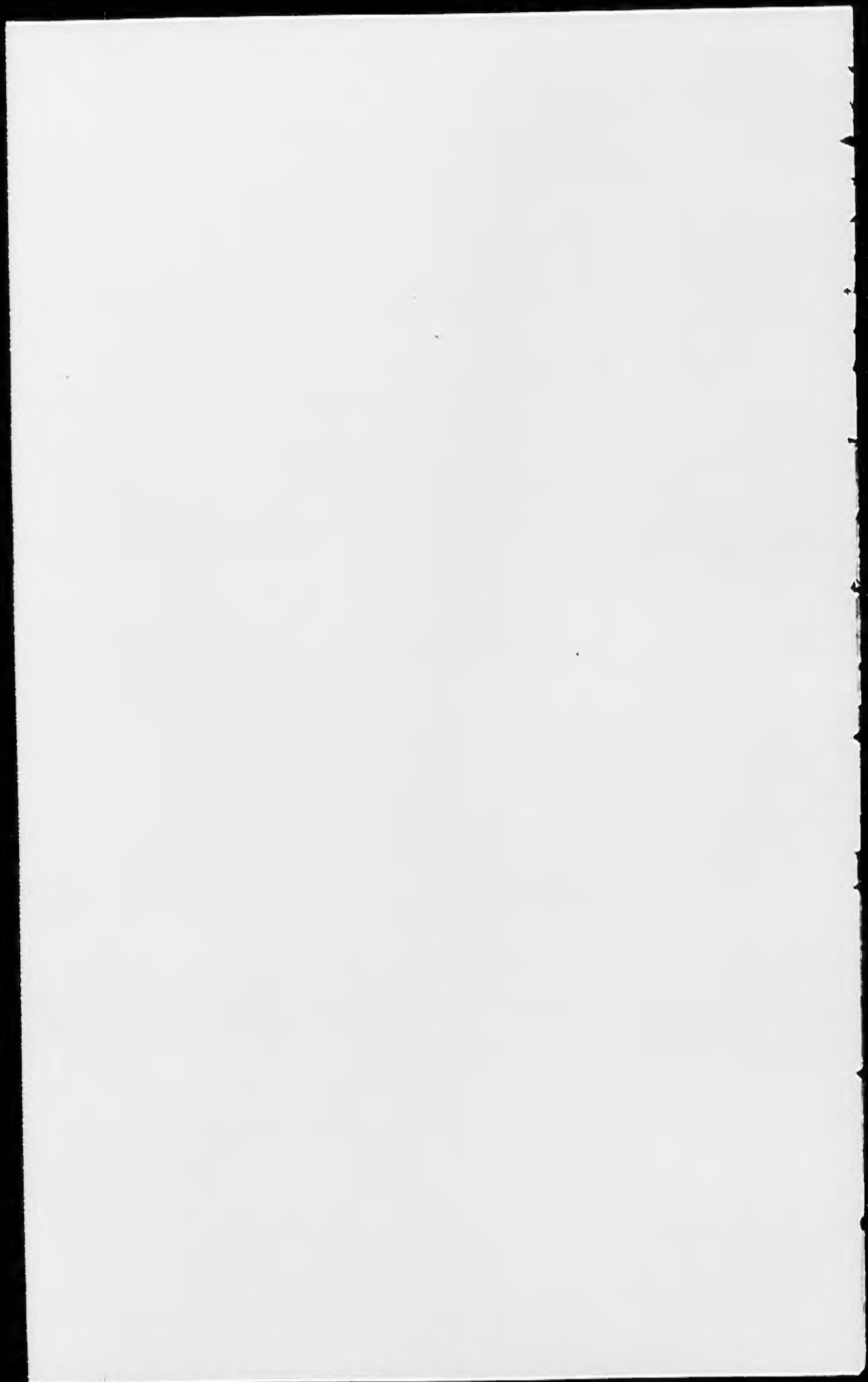


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[Filed Jan. 4, 1963]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

United States of America	)	No. 1-63
	)	LIBEL OF
v.	)	INFORMATION
	)	F.D.C. No. 48405
An article of device consisting)	
of an undetermined number of)	
devices labeled in part: "HUB-)	
BARD Electrometer" or "HUB-)	
BARD E Meter" and variously)	
labeled "for use in Scientol-)	
ogy" or "for use in Scientolo-)	
gical Processing" and "British)	
Mark IV" or unlabeled, and)	
accompanying as labeling for)	
the article an undetermined)	
number of items of written,)	
printed or graphic matter on)	
the premises of the Distribution)	
Center, Inc., 1812 19th Street,)	
N.W., Washington, D.C., which)	
items are used for promoting)	
sales of the article and sales)	
of services with the article)	
and consist of the following:)	
instruction manual on What to)	
Audit titled "Scientology: A)	
History of Man")	
)	
pamphlet "Dianetics The Evo-)	
lution of a Science")	
)	
pamphlet "Scientology 8-80")	
)	
pamphlets "Scientology The)	
Fundamentals of Thought")	
)	

pamphlet "Scientology, The Evo-)
lution of a Science")
)
instruction manual "Scientol-)
ogy: Clear Procedure")
)
pamphlet "What is Scientology?")
)
pamphlet "Sanity for the Lay-)
man" by Raymond Kemp, Ph.D.)
)
pamphlet "Why Some Fight)
Scientology")
)
instruction manual "Advanced)
Procedure and Axioms")
)
instruction manual "Child)
Dianetics")
)
instruction manual "The Hub-)
bard Electrometer" by John)
Sanborn)
)
instruction booklet "E Meter)
Essentials 1961")
)
leaflet "A Brief Biography of)
L. Ron Hubbard")
)
chart "Hubbard Chart of Human)
Evolution and Dianetic Proc-)
essing")
)
chart "Hubbard Chart of Atti-)
tudes")
)
pamphlet "The Only Valid)
Security Check")
)
pamphlet "Scientology Books")

pamphlet "Scientology Books,
1961"

bulletins headed "L. Ron Hub-
bard's PAB's" issues 1-5

periodical leaflets entitled
"Ability" or "Ability Minor 5"
(all of various issues)

To The Honorable Judge of the United States Dis-
trict Court for The District of Columbia.

Now comes the United States of America, by David
C. Acheson, United States Attorney for the District of
Columbia and shows the Court:

1. That this libel is filed by the United States of
America and prays seizure and condemnation of a
certain article of device, as hereinafter set forth, in
accordance with the Federal Food, Drug, and Cos-
metic Act (21 U.S.C. 301 et seq.).

2. That there are at Washington, District of Co-
lumbia, in possession of The Distribution Center,
Inc., and The Academy of Scientology, and The Hub-
bard Guidance Center, located at 1810, 1812 and 1817
- 19th Street, N. W., and 1907 "S" Street, N. W., Wash-
ington, D. C., or elsewhere within the jurisdiction of
this Court, an article of device consisting of an unde-
termined number of devices labeled in part "HUB-
BARD Electrometer" or "HUBBARD E Meter" and
variously labeled "for use in Scientology" or "For
use in Scientological Processing" and "British Mark
IV" or unlabeled, and accompanying as labeling for
the article an undetermined number of items of writ-
ten, printed or graphic matter on the premises of the
Distribution Center, Inc., 1812 19th Street, N. W.,
Washington, D. C., which items are used for promoting
sales of the article and sales of services with the ar-
ticle and consist of the following:

instruction manual on What to Audit titled
"Scientology: A History of Man"

pamphlet "Dianetics The Evolution of a Science"

pamphlet "Scientology 8-80"

pamphlets "Scientology The Fundamentals of Thought"

pamphlet "Scientology: The Evolution of a Science"

instruction manual "Scientology: Clear Procedure"

pamphlet "What is Scientology?"

pamphlet "Sanity for the Layman" by Raymond Kemp, Ph.D.

pamphlet "Why Some Fight Scientology"

instruction manual "Advanced Procedure and Axioms"

instruction manual "Child Dianetics"

instruction manual "The Hubbard Electrometer" by John Sanborn

instruction booklet "E Meter Essentials 1961"

leaflet "A Brief Biography of L. Ron Hubbard"

chart "Hubbard Chart of Human Evolution and Dianetic Processing"

chart "Hubbard Chart of Attitudes"

pamphlet "The Only Valid Security Check"

pamphlet "Scientology Books"

pamphlet "Scientology Books, 1961"

bulletins headed "L. Ron Hubbard's PAB's" issues 1-5

periodical leaflets entitled "Ability" or "Ability Minor 5" (all of various issues)

3. That the aforesaid article is a device within the meaning of 21 U.S.C. 321(h) and is misbranded in

commerce within the District of Columbia, within the meaning of 21 U.S.C. as follows:

352(a) in that its labeling contains statements which represent, suggest, and imply that the article is adequate and effective for diagnosis, prevention, treatment, detection and elimination of the causes of all mental and nervous disorders and illnesses such as neuroses, psychoses, schizophrenia, and all psychosomatic ailments, which psychosomatic ailments are represented to include most of the physical ailments of mankind such as arthritis, cancer, stomach ulcers and radiation burns from atomic bombs, poliomyelitis, the common cold, etc. and that the article is adequate and effective to improve the intelligence quotient, and to measure the basal metabolism, mental state and change of state of man; which statements are false and misleading since the article is not adequate and effective for the diagnosis, treatment, prevention, detection, and elimination of the causes of the diseases, and conditions stated and implied and the article is not adequate and effective to improve the intelligence quotient and to measure the basal metabolism, mental state and change of state of man; and

352(f)(1) in that the labeling of the article fails to bear adequate directions for use of the article for the purposes and conditions for which it is intended as represented and suggested in its labeling.

4. That the aforesaid article is in the possession of The Distribution Center, Inc., The Academy of Scientology, and The Hubbard Guidance Center, 1810, 1812, and 1817 - 19th Street, N.W. and 1907 "S" Street, N.W., Washington, D. C., or elsewhere within the jurisdiction of this Court.

5. That by reason of the foregoing, the aforesaid article is held illegally within the jurisdiction of this Court, and is liable to seizure and condemnation pursuant to the provisions of said Act, 21 U.S.C. 334.

WHEREFORE, libellant prays that process in due form of law according to the course of this Court in cases of admiralty jurisdiction issue against the aforesaid article; that all persons having any interest therein be cited to appear herein and answer the aforesaid premises; that this Court decree the condemnation of the aforesaid article and grant libellant the costs of this proceeding against the claimant of the aforesaid article; that the aforesaid article be disposed of as this Court may direct pursuant to the provisions of said Act; and that libellant have such other and further relief as the case may require.

Dated: January 4, 1963

UNITED STATES OF AMERICA

/s/ David C. Acheson
United States Attorney

/s/ Charles T. Duncan
Principal Assistant United
States Attorney

/s/ Joseph M. Hannon
Assistant United States Attorney

[Filed Jan. 4, 1963]

[Caption omitted in printing]

ORDER FOR ISSUANCE OF WARRANT AND
ADVERTISING OF SEIZURE

On the averments set forth in the libel filed in the above entitled case, it is the 4th day of January, 1963,

ORDERED That the warrant issue, returnable the 15th day of January, 1963, and it is further

ORDERED That, upon seizure of the herein libelled goods, public notice be given thereof in The Evening Star newspaper, in accordance with Supreme Court Admiralty Rule 10; and that such notice also be pub-

lished in the Washington Law Reporter in accordance with Rule 7(b) of this Court.

/s/ William B. Jones
Judge

[Filed Jan. 4, 1963]

[Caption omitted in printing]

WARRANT

THE PRESIDENT OF THE UNITED STATES TO THE MARSHAL FOR SAID DISTRICT, GREETING:

For the reasons stated in the Libel, herein filed on the 4th day of January, 1963, by the United States of America, you are hereby commanded to arrest an article of device consisting of an undetermined number of devices labeled in part: "HUBBARD Electrometer" or "HUBBARD E Meter" and variously labeled "for use in Scientology" or "For use in Scientological Processing" and "British Mark IV" or unlabeled, and accompanying as labeling for the article an undetermined number of items of written, printed or graphic matter, which items are used for promoting sales of the article and sales of services with the article and consist of the following: instruction manual on What to Audit titled "Scientology: A History of Man", pamphlet "Dianetics The Evolution of a Science", pamphlet "Scientology 8-80", pamphlets "Scientology The Fundamentals of Thought", pamphlet "Scientology: The Evolution of a Science", instruction manual "Scientology: Clear Procedure", pamphlet "What is Scientology?", pamphlet "Sanity for the Layman" by Raymond Kemp, Ph.D., pamphlet "Why Some Fight Scientology", instruction manual "Advanced Procedure and Axioms", instruction manual "Child Dianetics", instruction manual "The Hubbard Electrometer" by John Sanborn, instruction booklet "E Meter Essentials 1961", leaflet "A Brief Biography of L. Ron Hubbard", chart "Hubbard Chart of Human

Evolution and Dianetic Processing", chart "Hubbard Chart of Attitudes", pamphlet "The only Valid Security Check", pamphlet "Scientology Books", pamphlet "Scientology Books, 1961", bulletins headed "L. Ron Hubbard's PAB's" issues 1-5, periodical leaflets entitled "Ability" or "Ability Minor 5" (all of various issues), in the possession and custody of, or on the premises of the Distribution Center, Inc., the Academy of Scientology, and the Hubbard Guidance Center located at 1810, 1812, and 1817 - 19th Street, N. W., and 1907 S Street, N.W., Washington, D. C. or elsewhere within the jurisdiction of this Court, and detain the same until further order of the Court; and to warn all persons having any claim or interest therein, to be and appear before said Court on the 24th day of January, 1963, at 10:00 A.M., to answer said libel; and that in case of failure to appear the Court will proceed to determine the cause, and to make such order therein as to it shall seem right.

WITNESS, The Honorable Chief Judge of said Court, the 4th day of January A.D. 1963.

Harry M. Hull, Clerk

/s/ Amelia G. Shannon,
Deputy Clerk.

/s/ David C. Acheson
United States Attorney

[Filed Jan. 10, 1963]

U. S. MARSHAL'S RETURN OF SERVICE
UNITED STATES OF AMERICA
DISTRICT OF COLUMBIA

United States of America Clerk's No. 1 63

vs.

U. S. Marshal No. _____

An article of device consisting of an undetermined number of devices labeled in part: "Hubbard Electrometer" or Hubbard E Meter, Et Al:

Received by U.S.M. Jan. 4, 1963

I hereby certify and return that I served the annexed libel and monitions on the therein-named The Academy of Scientology, The Distribution Center, Inc., The Hubbard Guidance Center by handing to and leaving a true and correct copy thereof with Bonnie Turner, Communication Officer in charge personally at 1827 19th St N.W., Wash., D. C. in the said District at 2:15 p.m., on the 4th day of Jan., 1963.

Marshal's fees _____

Luke C. Moore
United States Marshal.
/s/ Harry T. Mattingly,
Deputy

Mileage _____

I hereby certify and return that I served the annexed libel and monitions on the therein-named the Distribution Center, Inc., The Academy of Scientology and The Hubbard Guidance Center by handing to and leaving a true and correct copy thereof with Mayre Rochrer, Director of Processing personally at 1907 S St N.W. Washington, D.C. in the said District at 2:15 p.m., on the 4th day of Jan., 1963.

Marshal's fees _____

Luke C. Moore
United States Marshal.
/s/ Robert L. Haislip
Deputy

Mileage _____

[Filed January 10, 1963]

U. S. MARSHAL'S RETURN

[Caption omitted in printing]

I hereby certify and return the annexed Warrant on the therein-named An article of device consisting of an undetermined number of devices labeled in part: "Hubbard Electrometer", Hubbard E Meter Et al: arresting the therein named (as per attached list) personally at 1810 19th St N.W., 1812 19th St N.W. 1827 19th St N.W., 1907 S St N.W. Wash., D.C. in the said District at 2:15 p.m., on the 4th day of Jan. 1963.

Marshal's fees _____

Mileage _____

Luke C. Moore
United States Marshal
/s/ Ellis G. Duley, Jr.
Charles Cranford
H. T. Mattingly
R. L. Haislip

Deputies

I hereby certify and return that I served the annexed libel and monitions on the therein-named Distribution Center, Inc., The Academy of Scientology and the Hubbard Guidance Center by handing to and leaving a true and correct copy thereof with Mr. Fudge, Organizational secretary personally at 1810 - 19th St N.W., Wash., D.C. in the said District at 2:15 p.m., on the 4th day of Jan. 1963.

Marshal's fees _____

Mileage _____

Luke C. Moore
United States Marshal
/s/ Ellis G. Duley Jr.
Deputy

DEPARTMENT OF JUSTICE

UNITED STATES MARSHAL
DISTRICT OF COLUMBIA
UNITED STATES COURT HOUSE
Washington 1, D.C.

Jan. 7, 1963

United States of America	Dist. Ct.
vs	1-63
The Distribution Center, Inc.	
The Academy of Scientology	
The Hubbard Guidance Center	

The following is a list of property seized by the U. S. Marshal on Jan. 4, 1963 from 1810-1812-1827 19th St. N.W., and 1907 S St. N.W., Wash., D.C.

List of Literature seized.

Abilities	623 packages (some of which were not complete packs)
8-80's	99 packs more or less (indicating some broken packs)
E Meter Essentials	19 packs more or less
Clear Procedure	40 packs more or less
Fundamentals of Thought	29 packs more or less plus 3,250 copies
Advanced procedure	39 packs more or less
Child Dianetics	3 packs more or less
History of Man	6 packs plus 1 broken pack
Chart of Human Evaluation	5 packs more or less
PAB's # 1	9 packs more or less
2	25 packs more or less
3	32 packs more or less

JA 12

4	53 packs more or less
5	32 packs more or less plus 2 cases (300 copies)
Scientology Books	1 broken pack
Scientology Books '61	1 broken pack
Brief Biography L P Hubbard	2 packages -(1 broken)
Chart of Attitudes	3 packs more or less
Sanity for Layman	33 packs more or less
Why Some Fight Scientology	7 packs more or less
Jo Burg - Security Check -	5 bundles more or less
What is Scientology	1 bundle more or less
Hubbard E Meter	59 packs more or less
Dianetic Evolution	3 packs more or less 1 box loose
Misc.	13 boxes (pamphlets 1 box (cords & cans)

List of Meters

<u>Serial Number</u>	<u>Name on Box</u>	<u>Address</u>
737	Pinkham	3611 Mary Ave. Balt.
790	Wm. Kanop	
290	Fred Payer	
954	Geo. Hancock	
523	Stella King	
778	J.J. Gillespie	
240	Fred Fairchild	
295	Ann Horner	
348	Bill Moore	
782		
317	D. Lambright	
704	Doug Hancock	
471		
748	Maureen Adlin	
370	Al Bellsex	
408	Wing Angel	
636	Horner	

JA 13

841	Werner Behnke	
718	Paul M. Breeden	
726	Marguerite Edelstein	
865	Wayne Rohrer	
404	Doris Lambright	
257	Eunice Ford	233 Monroe St., Brooklyn, N.Y.
966	Natalie Fisher	
263		
273		
835	Michael Moron	1704 19th NW
268		
485	Jean Reeve	
352	Fred Walker	
531	Gibbons	
891	David Foster	
1483/3(mark V)	Marilynn Routsong	
763	David Hancock	
455	Wing & Smokey Angell	
907	Anton James	
727	Helen Hancock	
218	Roger W. Conway	
542		
651	Bud Love	
119		
932		
735	Mogens V. Hermann	
387	Judy Spencer	
262	Janet Tucker	
531		
637	Froedel Bagley	
691	Don Walker	
944		
1483/52 (MarkV)	Wayne Rohrer	
330	Walker	
423	Frieda Stevens	OL 4-0127
500	M. Boruck	
492		
683	Don Hoskins	
747	Pem Wall	1813 Riggs Pl N.W.

JA 14

Total of 56 newer models

61 American Make (not in use)

9 parts of chasis

3 boxes of tin cans

/s/ Ellis G. Duley Jr.
Charles F. Cranford
Dep. U.S. Marshals
Washington, D.C.

[Filed Feb. 25, 1963]

MOTION TO QUASH ATTACHMENT AND
MONITION, ET CETERA, TO REQUIRE
RETURN OF SEIZED PROPERTY, AND
TO DISMISS THE LIBEL OF INFORMATION

Now comes the Claimants of record, and by the undersigned attorneys, move (1) to quash the Writ of Attachment and Monition; and (2) the attachment and seizure of the device and articles, and books, pamphlets, and all printed matter now in custody of the United States Marshal for the District of Columbia as a result of said seizure; and (3) for an order for the return thereof to the Claimants, and (4) to dismiss the Libel of Information, and as grounds therefor show to this Honorable Court as follows:

1.1 That the searches and seizures carried out herein, were unreasonable and unlawful, in that they were not conducted pursuant to a Warrant issued upon a showing of probable cause, under oath or affirmation and were contrary to and in violation of the Fourth Amendment to the Constitution of the United States of America, i.e.,

1.2 On January 4, 1963, a Warrant of Seizure issued from the Court directing the United States Marshall "to arrest an article of device consisting of an undetermined number of devices labeled in part: "HUBBARD Electrometer" or "HUBBARD Meter" and variously labeled 'for use in scientology' or 'For use in Scientological Processing'" et cetera, "and accompanying as labels for the article an undetermined number of written, printed or graphic matter, which items are used for promoting sales of the articles and sales of service with the article and consist of the following"; then describing by title various printed books, pamphlets, manuals and publications.

1.3 In obedience to said Warrant of Seizure the United States Marshal for the District of Columbia and his deputies, accompanied by other agents,

servants and employees of the Libellant, proceeded to enter the premises mentioned in such Libel, and other premises not therein identified by Libellant or identified in the Warrant by street number, where they informed the occupants of the various premises which they illegally entered that "this is a raid" and proceeded to violate the right of privacy of the individual Claimants and entered and searched their private dwellings without their consent or without legal grounds therefor, rifling their possessions, opening and searching the drawers of dressers in their rooms, looking under beds, opening and looking into closets, and laundry bag, forcing open suitcases and briefcases and other possessions of Claimants in attempting to locate and seize said article of device, and requiring Claimants to open their portfolios, handbags and briefcases, in order to remove from them printed matter being carried by them, under threat of arrest, and impeding and stopping their free movement. (See Attached Affidavits marked Exhibit "B") all without a warrant first obtained upon a showing of probable cause for the issuance under oath or affirmation, in deprivation of the rights guaranteed to the Claimants under the Fourth Amendment to the Constitution of the United States.

2.1 That said search and seizure was conducted and carried out in violation of the First Amendment to the Constitution of the United States in that said Libel of Information failed to name or disclose to the Court that the premises at 1812 19th Street, Northwest were occupied by the Founding Church of Scientology, (see Exhibit "A" attached hereto as a part hereof) an incorporated religious organization, that the Distribution Center, Inc., the Academy of Scientology, and Hubbard Guidance Center were subsidiary organizations of the Church, and that the entire action was designed and carried out to interfere with the free exercise of religion by a religious organization, and with freedom of the press.

2.2 That in connection with the search and seizure as described herein, the United States Marshal, his deputies and other employees of Libellant violated the sanctuary of the Founding Church of Scientology, interrupted and interfered with the confessions of its members which were being carried on, and stopped religious instruction of theological students taking place at the time in and upon some of said premises which were raided as aforesaid, and confiscated for the purpose of destruction, religious books, tracts, pamphlets, manuals and other printed and published matter (See Attached Affidavit marked "B") used by said Church for the propagation of its faith and for the instruction of its followers, in violation of the guarantees of the First Amendment to the Constitution of the United States.

WHEREFORE, these Claimants pray that this Honorable Court find and determine that the aforementioned seizure and taking from Claimants of their possessions and personal property, was in violation of their constitutional rights, under the First and Fourth Amendments to the Constitution of the United States and that it direct that the same be returned to them, as the lawful owners thereof, instanter as their interests appear, and that the Libel of Information herein be dismissed as violating the First Amendment to the Constitution of the United States, as being a restraint upon and interference with the free exercise of their religious beliefs and practices, and freedom of the press.

/s/ Oscar H. Brinkman

/s/ J. P. Donovan

Attorneys for Claimants

[Certificate of Service]

[Exhibit "B" 1]

AFFIDAVIT

I, JOHN FUDGE, being first duly sworn according to law on oath depose and say that I am a Minister of the Founding Church of Scientology of Washington, D.C., its Assistant Pastor, and Organization Secretary in charge of said Church, which was incorporated originally, on or about July 2, 1955, under the name of "The Founding Church of Man's Religion of Washington, D.C.," as a non-profit religious society to act as a parent church for the propagation of the religious faith known as "Scientology" and to act as a Church for the religious worship of that Faith, pursuant to the provisions of Chapter 6 of Title 29 of the District of Columbia Code (1951) as amended, and more particularly Sections 601 to 606, both inclusive, of said Chapter; that said Church occupies for its religious purposes premises which it rents or leases at 1810, 1812, and 1827 19th Street, N.W., and 1907 S Street, N.W., all in Washington, D.C., but does not occupy or use premises at 1817 19th Street, N.W., in said city; that the religious work of the Church is carried on through subsidiary organizations known as Academy of Scientology (used for the instruction of students of the religion); Distribution Center, Inc., Hubbard Communications Office, and others; that part of the premises at 1810 19th Street, N.W., are used as a residence for students of the Church's religious academy, and part of the premises at 1827 19th Street are used as a residence for members of the Church's staff; that on or about 3:30 PM on January 4, 1963, I was proceeding from 1812 to 1810 19th Street, N.W., in the course of my duties, and I saw in 19th Street, opposite Church premises, a truck or automobile with "United States Marshal" or similar words painted on it, and observed about a dozen men around it; that I recognized among them an agent or inspector of the federal Food & Drug Administration who had interviewed me in November, 1962 concern-

ing the operations of the Church but who at no time instructed or requested that the Church refrain from its use in religious confessionals of what are known as Hubbard Electrometers or of the Church's books and other religious literature which were furnished to said agent and another who accompanied him; that the men whom I observed advanced on the Church premises aforesaid, and one man charged down the alley adjoining 1810 19th Street toward the rear entrance to the Church; that the men stated to me they were United States Marshals and one said "This is a raid," whereupon I said that I would like to consult the attorney for the Church; that one of the Marshals replied, "it doesn't make any difference," or words to that effect, and handed to me a copy of what purported to be a warrant; that before I could read the document the men proceeded to enter and go through the premises occupied by the Church and its religious organizations; that I then made efforts to obtain the presence of the attorney for the Church, but meantime some of the Marshals had ascended the stairs of 1810 19th Street and demanded that the member of the staff who acted as receptionist for the Church open a door of a room that was being used for religious counseling purposes by a Minister of the Church; that I told newspaper reporters and cameramen who had followed the Marshals into the Church premises to leave them, and one of the men with a camera said he was working for the federal Food & Drug Administration; that I heard a Marshal threaten the lady who acted as receptionist for the Church that she would be arrested if she did not open the locked door of the room where one of our Ministers (also a woman) was administering religious counseling to another, the room (at 1810 19th Street) being one used as a residence for students of the Academy of Scientology but also used during part of some days for religious counseling purposes; that I later observed Marshals stopping students and searching their bags, folders, and brief cases or

portfolios; that religious books used for church purposes were removed from a closet at 1827 19th Street, which is also partially used as a residence for staff members of the Church; that the agents of the federal Food & Drug Administration whom I saw at the times aforesaid appeared to be giving directions to the Marshals; and that to the best of my knowledge and belief none of the meters and/or religious books and literature seized by the Marshals had been used for the diagnosis or treatment of any diseases, but nevertheless the meters and books were loaded in trucks or automobiles and taken away by the Marshals.

/s/ John Fudge

[Jurat]

[Exhibit "B" 2]

AFFIDAVIT

I, ANTON JAMES, being first duly sworn according to law on oath depose and say that I am a Minister of the Founding Church of Scientology of Washington, D. C., and am the Book Administrator for the Hubbard Communications Office, one of the Church's subsidiary organizations, located at 1827 19th Street, N.W., Washington, D.C.; that I was there at about 3 P.M., on January 4, 1963 when someone phoned me that there was a raid going on involving Church premises; that I went out on 19th Street and saw a crowd gathered in front of the Church and its Academy of Scientology at 1812 and 1810 19th Street; that I noticed at least eight men in a group, some of whom had cameras, and some had badges of U.S. Marshals; that there were three autos with doors open across the street from the Church, some double parked and I believe marked U. S. Marshal; that there were policemen at the South end of the block at S Street,

and also blocking Swan Street at its intersection with 19th; diverting traffic from entering the block; that there were two uniformed police present, one with gold braid on his uniform; that thereupon I asked some of the group of men who they were and they said U. S. Marshals; that some were on the front steps of 1810 19th Street, which contains the Church offices and is also used as a dormitory or living quarters for theological students of the Church's Academy of Scientology, and for religious counseling purposes; that I asked the men for their names and they refused to give them; that they told me they were raiding the place; that I then went into 1810 and saw two men in the hallway, and I asked Janet Tucker, the Registrar of the Church, who was in the Church office at 1810 what was happening and she said the Church was being raided and that some of the Marshals were upstairs; that I then observed there were three men upstairs apparently having an argument with one of the Church's Ministers, Marilyn Routsong; that I recognized one of the men as an agent of employee of the Federal Food & Drug Administration, who in company with another agent of the Department had interviewed me a month or two before and who, at their request, were supplied with information about the Hubbard Electrometer and also supplied with Church books and religious literature but who had made no request for discontinuance of the use of the meters or the books and literature; that I was told by a Marshal that the FDA agent was in charge; that I then asked the men what they wanted and they said they had a warrant and it was downstairs and that it was all in the warrant; that they were trying to get by our Minister, Marilyn Routsong who was standing in the doorway upstairs and to enter the room where she had been engaged in religious counseling; that I then got the warrant from Janet Tucker's Church office and took it over to 1827 19th Street which is a building used by the Church for its Hubbard Communications office and which has staff

living quarters on one floor which are used for residence purposes; that I then returned to 1812 and saw men coming in and going out of the building which is used for the religious services of the Church and also for instructing theological students of the Church's Academy of Scientology in the beliefs and practices of the religion; that I observed some of the men entering 1812 had cameras and that previously newspapermen had followed the Marshals into 1810; that when I returned to 1827 there were at least four Marshals there who were conferring with members of the Church staff; that I got them out into the hall and told them we would like them to defer any searching until we could confer with the Church's attorney, and one of the Marshals told me they didn't even need the warrant and didn't have to show us anything; that they went up to the fourth floor of 1827 19th Street and searched Pem Wall's living quarters but found nothing to take; that they searched the kitchen and they also searched the personal luggage of our Assistant Pastor John Fudge; that they also went into the room used as living quarters by Joe Breeden and they took two meters including my own and another; that they also searched Breeden's clothes closet opposite his room and took books he had in it; that I then left and came back to the Church at 1812; where I found the Marshals had meters stacked on the front steps and a Marshal warned me away; that I then asked the Marshals whether they knew they were raiding a Church and asked what their religion was; that one of the Marshals replied he was a Catholic and he would raid a Catholic Church just as readily if ordered to do it and wouldn't even feel bad about it; that I went into 1812 and saw Marshals picking up and taking away meters from the room where Church services are held and where religious instruction is given to theological students; that the Marshals were taking the meters away from the students who had been attending a lecture on the use of the meters in the confes-

sional procedures and practices of the Church; that I saw students being stopped in the halls and elsewhere in the Church building and having their book bags searched; that I then went into the basement of the Church and found Marshals there who were carrying out the Church's religious books and pamphlets, using some of the books to hold the door open; that they had deposited some of the religious books on the wet pavement; that there were about eight or ten men pulling religious books off of shelves, and the Food and Drug Administration agent was telling them what to take; that I asked them to keep a list of what they were taking, and also asked whether the room could be padlocked so the books would remain in it, and they said No; that the Marshal's trucks or cars were parked outside the Church buildings and the men were throwing meters in on the floors; that I tried to get them to stop this and I went to the Marshal in charge and asked that the meters be treated gently as they would be ruined otherwise, and he sent word out to the men to handle them carefully; that I then got packing material out of the basement and helped the Marshals put the meters in cartons; that I observed some of the Marshals had straps across their bodies which indicated to me that they were carrying firearms; that at 1827 I observed the Marshals pulling out copies of books which were the personal property of the Pastor of the Church; that the Marshals also opened three crates of religious books marked for shipment to England; that later three policemen came into the basement of the Church, one wearing gold braid, but made no explanation of their presence; that, to the best of my knowledge and belief, none of the meters seized had been used for the diagnosis or treatment of any disease and were not intended for such purposes, but were used in religious counseling and its instruction.

/s/ Anton James

[Jurat]

[Exhibit "B" 3]

AFFIDAVIT

I, JANET TUCKER, being first duly sworn according to law on oath depose and say that I am Registrar of the Founding Church of Scientology of Washington, D.C., and Minister pro tem; that I was acting as Registrar on Church premises at 1810 19th Street, N.W., Washington, D.C., about 3 PM of January 4, 1963 when I received information that United States Marshals were coming in to get our meters; that within a few minutes several men came in and started by the stairs to the second floor without asking permission or showing any warrant; that the Church receptionist asked: "What are they supposed to be in here for and she went upstairs to ask them what they were doing; that soon afterward four or five men came into the hall including men with cameras, and I asked them to go into the Church reception room and be seated, but they did not comply.

/s/ Janet Tucker

[Jurat]

[Exhibit "B" 4]

AFFIDAVIT

I, WAYNE ROHRER, being first duly sworn according to law on oath depose and say that I am a Minister Pro Tem of the Founding Church of Scientology of Washington, D.C., and its Director of Proc-

essing for the Hubbard Guidance Center; that at approximately 3:10 PM on January 4, 1963, I was engaged in religious counseling on Church premises at 1907 S Street, N.W., Washington, D.C., when I was informed by a phone call from a member of the Church staff that Federal Marshals were there to take our E-Meters; that I ended my religious counseling and that of other members of the staff because I was told that the Marshals were going to search the premises; that as I went through the premises for the purpose of ending the religious counseling sessions the Marshals followed me into the various rooms; that I saw them take a number of meters including two out of my office; that to the best of my knowledge and belief the meters which were seized were not used for the diagnosis or treatment of any disease and, as a matter of fact, I have a family doctor of my own in Virginia; that about a week or two before the raid by the Marshals I had arrived from abroad in Baltimore and my meters were examined by Customs Inspectors and passed without objection.

/s/ Wayne Rohrer

[Jurat]

[Exhibit "B" 5]

AFFIDAVIT

I, NATALIE FISHER, being first duly sworn according to law on oath depose and say that I am a Minister Pro Tem and spiritual counselor of the Founding Church of Scientology of Washington, D.C., and that on the afternoon of January 4, 1963, I was engaged in spiritual counseling of another person, a woman, in church premises at 1907 S Street, N.W., Washington, D.C., using an E-Meter as an aid to the religious confessional practices of the Church; that while so engaged United States Marshals entered the room, which was used as a residence or living quar-

ters, and took the meter without giving a receipt although I requested one; that they also searched a portfolio which was on a shelf of a closet or in a drawer; they further searched dresser drawers, and one of the Marshals looked under the beds and also felt the tops of the beds; one of the closests that was contained clothing and other personal effects; that the Marshals said a receipt would be given for the entire seizure.

/s/ Natalie Fisher

[Jurat]

[Exhibit "B" 6]

AFFIDAVIT

I, HARRIS ANGELL, being first duly sworn according to law on oath depose and say that I am a Minister of The Founding Church of Scientology of Washington, D.C., and Technical Director thereof, and as such was engaged in my duties in Church premises at 1810 19th Street, N.W., Washington, D.C.. on the afternoon of January 4, 1963; that while I was so present a group of seven or eight men entered said premises, some of them carrying cameras, some of whom were later identified to me as newspaper representatives; that a couple of the other men in the group entered the office of the Registrar of the Church on said premises and displayed what appeared to be a warrant of the United States District Court for the District of Columbia, whereupon I told them that the officials of the Church would like time to talk with an attorney before action was taken by the men who identified themselves as United States Marshals; that one thereupon replied, in effect: "That doesn't make any difference," and a couple of the Marshals went upstairs and began banging on doors of rooms used for religious counseling and became noisy; that I then went upstairs and found one Marshal was engaged in an

argument with one of our Ministers. He said he would use force if he had to to enter the room; that I then proceeded to the adjoining Church premises at 1812 19th Street, N.W., and notified my wife and other Church officials of what was taking place; whereupon I returned to the Church premises at 1810 19th Street and saw Marshals coming downstairs carrying electrometers that were used as an aid to the religious counseling work of the Church; that upon again returning to the Church premises at 1812 19th Street I saw some of the Marshals taking meters away from students attending the theological students' course of the Academy of Scientology in the area also used for religious services of the Church; that the Marshals took the meters and religious booklets and pamphlets from the students' hands, suit cases, and portfolios; that the meters and religious printed matter taken by the Marshals had not been used for the diagnosis or treatment of any disease and cannot possibly be used in that way or for that purpose; that during the times aforesaid traffic was blocked from 19th Street by policemen, and the Street was occupied by Marshal's cars or vans; that I heard one girl student protest to a Marshal that the seizures constituted an illegal action in taking people's personal property, and he replied: "Do you want to be locked up for interfering?"

/s/ Harris Angell

[Jurat]

[Exhibit "B" 7]

AFFIDAVIT

I, JEAN REEVE, being first duly sworn according to law on oath depose and say that I am a Minister Pro Tem and Spiritual Counsellor of the Founding Church of Scientology of Washington, D.C., and have been working in the capacity of Deputy Director of

ters, and took the meter without giving a receipt although I requested one; that they also searched a portfolio which was on a shelf of a closet or in a drawer; they further searched dresser drawers, and one of the Marshals looked under the beds and also felt the tops of the beds; one of the closests that was contained clothing and other personal effects; that the Marshals said a receipt would be given for the entire seizure.

/s/ Natalie Fisher

[Jurat]

[Exhibit "B" 6]

AFFIDAVIT

I, HARRIS ANGELL, being first duly sworn according to law on oath depose and say that I am a Minister of The Founding Church of Scientology of Washington, D.C., and Technical Director thereof, and as such was engaged in my duties in Church premises at 1810 19th Street, N.W., Washington, D.C.. on the afternoon of January 4, 1963; that while I was so present a group of seven or eight men entered said premises, some of them carrying cameras, some of whom were later identified to me as newspaper representatives; that a couple of the other men in the group entered the office of the Registrar of the Church on said premises and displayed what appeared to be a warrant of the United States District Court for the District of Columbia, whereupon I told them that the officials of the Church would like time to talk with an attorney before action was taken by the men who identified themselves as United States Marshals; that one thereupon replied, in effect: "That doesn't make any difference," and a couple of the Marshals went upstairs and began banging on doors of rooms used for religious counseling and became noisy; that I then went upstairs and found one Marshal was engaged in an

argument with one of our Ministers. He said he would use force if he had to to enter the room; that I then proceeded to the adjoining Church premises at 1812 19th Street, N.W., and notified my wife and other Church officials of what was taking place; whereupon I returned to the Church premises at 1810 19th Street and saw Marshals coming downstairs carrying electrometers that were used as an aid to the religious counseling work of the Church; that upon again returning to the Church premises at 1812 19th Street I saw some of the Marshals taking meters away from students attending the theological students' course of the Academy of Scientology in the area also used for religious services of the Church; that the Marshals took the meters and religious booklets and pamphlets from the students' hands, suit cases, and portfolios; that the meters and religious printed matter taken by the Marshals had not been used for the diagnosis or treatment of any disease and cannot possibly be used in that way or for that purpose; that during the times aforesaid traffic was blocked from 19th Street by policemen, and the Street was occupied by Marshal's cars or vans; that I heard one girl student protest to a Marshal that the seizures constituted an illegal action in taking people's personal property, and he replied: "Do you want to be locked up for interfering?"

/s/ Harris Angell

[Jurat]

[Exhibit "B" 7]

AFFIDAVIT

I, JEAN REEVE, being first duly sworn according to law on oath depose and say that I am a Minister Pro Tem and Spiritual Counsellor of the Founding Church of Scientology of Washington, D.C., and have been working in the capacity of Deputy Director of

Processing and was so engaged, overseeing testing operations on the afternoon of January 4, 1963, on Church premises at 1907 S Street, N.W., Washington, D.C., when about six men entered said premises some of whom were wearing badges; that they started going through the building and someone on the staff asked them not to; that I had an E-meter in a religious counselling room on the ground floor of said premises; that the Marshals or one of them picked it up and was carrying it away when I asked for a receipt; that they did not serve a warrant on me; that I had a brief case on a table, which a Marshal picked up and from which he removed religious books and pamphlets; that I asked if I could see what they were taking so I could put my name on them, and the Marshal permitted me to put my name on some Ability magazines that are published by the Church; that the Marshals also examined a stack of papers on my table; that the meter and the books and other religious publications which the Marshals seized and took away were not used to diagnose or treat any disease; that the articles taken were my own property.

/s/ Jean Reeve

[Jurat]

[Exhibit "B" 8]

AFFIDAVIT

I, MARILYN ROUTSONG, being first duly sworn according to law on oath depose and say that I am a Minister of the Founding Church of Scientology of Washington, D.C.; that about 3 PM of January 4, 1963 I was on the second floor of Church premises at 1810 19th Street, N.W., engaged in religious counseling of another person; that I heard a loud noise outside the room in which I was conducting the counseling and observed that someone was rattling the door of the room and pounding on it; that I then

partly opened the door and saw several men and a woman member of our Church staff who was trying to persuade the men to go downstairs; that the men refused to comply and said as I partly opened the door that they would break it down if necessary; that I then saw they had badges, and they said they wanted meters; that I asked by what right or authority they were there, and said that I wanted to talk with a lawyer; one man said: "I am coming in, lady," but I continued to stand in the doorway and said that I had a right to talk with my lawyer; however, when I was informed that they had a warrant I admitted them to the room; that when they took my electrometer I put my name on it but they refused to give me a receipt although I told them it was my own personal property; that later I saw a Marshal take a meter from a truck outside, and hold it open to permit a photographer to take a picture of it; that the meter which was seized from me was used as an aid in religious counseling and the confessional practices of the Church and was not used to diagnose or treat any disease.

/s/ Marilyn Routsong

[Jurat]

[Exhibit "B" 9]

AFFIDAVIT

I, JAE HAWKS, being first duly sworn according to law on oath depose and say that I am Extension Course Director of the Founding Church of Scientology of Washington, D.C., and that on the afternoon of January 4, 1963 I was in the Training Office on the second floor of premises at 1812 19th Street, N.W., occupied by the Church in Washington, D.C.; that I was present when United States Marshals entered and searched file cases and removed two E-meters, and when they at the same time opened and searched desk drawers of the Church and seized and carried away

copies of the Ability magazine published by the Church.

/s/ Jae Hawks

[Jurat]

[Exhibit "B" 10]

AFFIDAVIT

I, JOHN J. GILLESPIE, being first duly sworn according to law on oath depose and say that I am a student of the Academy of Scientology of the Founding Church of Scientology of Washington, D.C.; that on the afternoon of January 4, 1963 I had finished a session of training in spiritual counseling held in a basement room of Church premises at 1812 19th Street, N.W., Washington, D.C., and was completing my report when United States Marshals abruptly entered the room followed by a man with a camera; that the Marshals said "This is a raid" or words to that effect, "and we are confiscating your meters;" that the said Marshals did not then and there show a warrant for the seizure but said there was a Court order; that they seized my meter and some Church books or pamphlets; that there was a session of religious counseling going on when the Marshals entered and they created considerable noise; they did not show a Court order to me.

/s/ John J. Gillespie

[Jurat]

[Exhibit "B" 11]

AFFIDAVIT

I, WILLIAM KNOP, being first duly sworn according to law on oath depose and say that I am a student of the Academy of Scientology of the Founding Church of Scientology of Washington, D.C.; that I was in at-

tendance in the lecture hall and Church at 1812 19th Street, N.W., Washington, D.C., on the afternoon of January 4, 1963 when United States Marshals entered and said "This is a raid" or words to that effect; that they then began taking E-meters which are used in religious instruction of the Academy; that I went up to a room on an upper floor where my meter had been left earlier in the day but it was gone; that a Marshal asked me "Do you have any pamphlets in your brief case," and when I opened it the Marshals took two religious pamphlets; that the Marshals showed me no warrant for the seizure of my meter or the publications.

/s/ William Knop

[Jurat]

[Exhibit "B" 12]

AFFIDAVIT

I, MAUREEN ADKIN, being first duly sworn according to law on oath depose and say that I am a student at the Academy of Scientology of the Founding Church of Scientology of Washington, D.C., and that on the afternoon of January 4, 1963 I was engaged in a basement room of the Church at 1812 19th Street, N.W., Washington, D.C., in a session of religious counseling involving the confessional practices of the Church; that three men rushed into the room without first knocking on the door which they threw open and said: "We want everybody's E-meter; this is a raid" or words to that effect; that there were several other students in the room who had meters; that I asked the intruders "What is this all about?", and they said they couldn't tell me; that they showed no warrant to me; that I had a folder of papers in my arms as well as a meter and a Marshal grabbed them away from me; that when I told him the papers and meter were personal property he replied; "I don't

care."; that the meter was not used for the diagnosis or treatment of any disease, nor were the papers taken from me.

/s/ Maureen Adkin

[Jurat]

[Exhibit "B" 13]

AFFIDAVIT

I, MARIE BORUCK, being first duly sworn according to law on oath depose and say that I am a student at the Academy of Scientology of the Founding Church of Scientology of Washington, D.C., and that about 3 PM on January 4, 1963 I was in the room used by the Church for its religious services and also used as a lecture hall of said theological Academy, having in my possession an E-Meter used in religious counseling and the confessional practices of the Church and concerning which a lecture had been given; that the meter was on the floor beside me when a United States Marshall, with others, entered the lecture hall and Church and attempted to grab the meter; that I stopped him and asked to see a warrant for the seizure, but he pulled the meter away from me and gave it to another man without showing me a warrant, but he pointed out a man who he said had a warrant; that I had not at any time used the meter to diagnose or treat any diseases.

/s/ Marie Boruck

[Jurat]

[Exhibit "B" 14]

AFFIDAVIT

I, MEL BEAR, being first duly sworn according to law on oath depose and say that on January 4, 1963 I was living at 1827 19th Street, N.W., Washington, D.C., in premises occupied by the Hubbard Communications Center of the Founding Church of Scientology of Washington, D.C., and that after the raid on said premises by United States Marshals on the date aforesaid I was unable to find in the room that I had occupied a number of religious books and other publications of said Church which I had left there, and also an E-Meter which had been there.

/s/ Melvin (Mel) Bear

[Jurat]

[Exhibit "B" 15]

AFFIDAVIT

I, ELLEN D. ARNOLD, being first duly sworn according to law on oath depose and say that I am a student at the Academy of Scientology of the Founding Church of Scientology of Washington, D.C., and that during the latter part of the afternoon of January 4, 1963, I was leaving the premises of the Church and its religious school, the said Academy, at 1812 19th Street, N.W., Washington, D.C., to go home, but I was stopped in the hallway of said premises by United States Marshals who were standing there; that they thereupon required me to open my brief case, which I was carrying, to see if I had an E-meter in it, and they also conducted a search of the purse which I had on my arm by feeling the purse.

/s/ Ellen D. Arnold

[Jurat]

[Exhibit "B" 16]

AFFIDAVIT

I, BONNIE TURNER, being first duly sworn according to law on oath depose and say that I am a Minister of the Founding Church of Scientology of Washington, D.C., and in charge of its affiliated organization, the Hubbard Communications Office at 1827 19th Street, N.W., Washington, D.C., the said premises of the Church also being used for living quarters by some members of the Church staff, including myself on January 4, 1963; that on said date three men entered the premises used by the Church at 1827 19th Street, N.W., Washington, D.C., and presented a warrant and monition; that I told them I wanted to consult with a lawyer, but they nevertheless later searched the rooms in the building and after they left I was unable to find an E-meter which I had left on a table in the room where I lived at said address, and also missing from my room were copies of various religious books and publications of the Church.

/s/ Bonnie Turner

[Jurat]

[Filed March 11, 1963]

AFFIDAVITS OPPOSING MOTION TO QUASH

Charles H. Everline, being first duly sworn, deposes and says:

I am an Inspector employed by the United States Food and Drug Administration, presently stationed in Nashville, Tennessee.

On October 17 and 18, 1962, I visited in an official capacity The Distribution Center, Inc., The Hubbard Guidance Center, and The Founding Church of Scientology, Inc., Washington, D. C.

Mr. Bonnie B. Turner, Vice President, The Distribution Center, Inc., and In Charge, The Hubbard Communications Office, stated that The Distribution Center is the organization that sells books, booklets including back issues of Ability, etc., and the E-meter device. The Distribution Center is the only organization from which the books, booklets, etc. and the E-meter can be bought. He stated that The Distribution Center sells the E-meter to anybody who wants one, regardless of whether he is a member of or interested in The Founding Church of Scientology. He stated that the cost of an E-meter was \$125.00 with a 20 percent discount to members of Hubbard Association of Scientologists International (HASI). The wholesale price of the E-meter to The Distribution Center is \$47.00.

Mr. Turner stated that HASI is an organization which anyone may join whether or not he is a member of or interested in The Founding Church of Scientology. HASI publishes "Ability" magazine which is sent monthly to all international (\$15.00 per year) and participating (\$5.00 per year) members of that organization.

Mr. Turner also stated that the building at 1827 - 19th Street, N.W., housing The Hubbard Communication Office, contained offices only and that no one

lived on the premises. He said that the purpose of the Hubbard Communications Office is to disseminate information to and from L. Ron Hubbard to and from the various Scientology organizations in the United States.

Mr. Turner explained that auditors in the field outside of Washington, D.C., Los Angeles, California, and New York, New York, mostly operate under a contract or franchise. The franchise grants them exclusive rights to audit or process within a given geographical area; in turn all such franchise holders forward 10 percent of the money they earn under the franchise to the Hubbard Communications Office.

Mr. Turner stated that an individual undergoes processing to be cleared and that the E-meter must be used in processing. Processing is the application of the methods of Scientology by an auditor for the purpose of clearing the individual.

The purpose of the auditor is to help the public by processing them and giving them courses. A person can become an auditor by taking courses at the Academy of Scientology. Such a person need not have been processed or cleared or be a member of the Founding Church of Scientology.

Mr. L. John B. Fudge, Organizational Secretary and Assistant Pastor, The Founding Church of Scientology, Inc., Washington, D.C., informed me that an individual did not have to be a member of the church to be processed or to become an auditor. He stated that The Founding Church of Scientology was not interested in obtaining converts. He said that, at the time, there were approximately 10 to 40 persons who were attending church services and that there were approximately 100 students. Mr. Fudge stated that L. Ron Hubbard is Pastor of The Founding Church of Scientology, Inc., Washington, D.C.

Mr. Harris Richardson Angell, Special Director of Training, Academy of Scientology, stated that the E-meter was an aid which was used by auditors to

treat the cause of illness. He said that by treating the cause of illness the condition itself could disappear.

Both Mr. Fudge and Mr. Angell informed me that no one lived on the premises of 1810 - 19th Street, N.W. or on the premises of 1907 S Street, N.W. They stated that some of the rooms had previously been rented to students, but that practice was now being stopped.

In the building at 1812 - 19th Street, N.W., on a bulletin board located in the main hall on the first floor, I saw the following descriptions of the purposes of the Academy of Scientology and The Hubbard Guidance Center which Mr. Fudge and Mr. Angell watched me copy verbatim:

The Academy of Scientology: "to train the best auditors in the world."

The Hubbard Guidance Center: "to do more for people's health and ability than has ever before been possible and to give the best auditing possible. To help people."

* * *

On January 4, 1963, I accompanied Deputy United States Marshals for the District of Columbia in their seizure of a number of E-meter devices and a quantity of literature on the premises of 1810, 1812 and 1827 - 19th Street, N.W., and 1907 S Street, N.W., Washington, D.C.

The group I was with, consisting of myself and Inspector Ray K. Epling and several Deputy United States Marshals, approached the building at 1810 - 19th Street, N.W., Mr. L. John B. Fudge, Organizational Secretary and Assistant Pastor, The Founding Church of Scientology, Inc., Washington, D.C., was standing on the front porch watching us. The warrant of attachment was served upon Mr. Fudge as

soon as we reached the porch, and it was explained to him that the Marshals were there to execute the warrant of attachment issued by the United States District Court for the District of Columbia calling for the seizure of all Hubbard Electrometers, E-meters, etc. and all copies of certain pieces of literature named in the warrant.

Mr. Fudge stated that he wished to inform his attorney and Mr. Fudge, the Marshals, Inspector Eppling and myself then went into 1810 - 19th Street, N.W. Mr. Fudge went into an office and we proceeded to the basement where a preliminary and cursory examination was conducted. We returned to the first floor and proceeded up the stairs to the second floor where the first door we came to was locked. At this point, the woman receptionist on the first floor came up the stairs and demanded to know who we were and why we were there. It was explained to her that the Marshals were there to execute a warrant of attachment calling for the seizure of all E-meters and certain literature on the premises and she was asked to please open the locked door. This explanation was repeated to Anton James and Harris Richardson Angell as each joined the group. After a few minutes, the door was opened from the inside by a woman who blocked the doorway. The warrant of attachment was shown to her and then explained to her. A meter which was sitting on the table in the middle of the room was collected by the Marshals after the woman stepped aside and put her name on the meter. Other meters and literature was collected from various portions of the building, including the basement where four or five stacks of back issues of Ability magazine were located.

I spoke to the Marshal standing at the back door who told me that he had stopped people who were trying to take E-meters out of the back door of the building; the Marshal had a number of E-meters neatly stacked next to the door on a stand.

Inspector Epling and myself, together with a couple of Marshals, went into 1812 - 19th Street, N.W. In the large room to the right of the stairs there were approximately 20 people sitting facing each other in groups of two. There were a number of meters on the floor in various locations throughout the room. The Marshals went into the room, explained they were there to carry out the warrant, and tried to collect the meters but were blocked and physically restrained by some of those in the room. Only one of the machines was collected because of the interference of the persons in the room.

At this point, Mr. Oscar H. Brinkman, attorney at law, arrived. Mr. Brinkman, Mr. Angell, Mr. Fudge, three of the Marshals and I then went up into Mr. Fudge's office.

The warrant of arrest was shown to Mr. Brinkman and it was explained to him that the Marshals were there to seize all E-meters and certain specified literature on the premises. During the course of the discussion, Mr. Brinkman stated "I want all your names because, of course, we're going to sue all of you." The names were given. When he asked for my name, I presented him with my credentials. Mr. Brinkman also told Mr. Fudge and Mr. Angell that they couldn't resist the Marshals. As I was leaving the room, Mr. Brinkman asked if I were married; I said that I was. He then asked if I had any personal property; I stated that I had very little. He then said, "We're going to sue all of you — you in particular."

The Marshals then proceeded to examine the remainder of the premises at 1812 - 19th Street, N.W. I observed two of the Marshals engaged in a discussion with the persons in the large room. The Marshals were still explaining their reason for being there and some of the people were still physically crowding around and restraining the Marshals from collecting the machines. Other persons were wandering in and out of the room. At one point, the Marshals left the room and the doors were closed from

the inside. The Marshals waited outside. I left that area and when I returned, in approximately 15 minutes, the doors were opened. The people in the room were folding up the chairs. Two Marshals stood on each side of the hallway away from the door. Each person inside the room came out of the door carrying a chair. Most of them had a briefcase, large lady's handbag, or similar object. Some also had books under their arms. Each person, without any request or statement from any of the Marshals, voluntarily stopped in front of the Marshals and voluntarily opened up the containers. A number of E-meters found in the containers were collected.

The literature which was collected on the premises of 1810 - and 1812 - 19th Street, N.W., was collected where obviously laying around. Meters and literature were collected all throughout the buildings, including four meters found on the fire escape outside of 1812 - 19th Street, N.W.

Throughout the entire time I observed no violence or threats of violence to any one connected with Scientology on the part of the Marshals. Except for the confusion caused by large numbers of persons — many of them talking at once — there was no undue confusion or noise during the entire visit.

[Filed March 11, 1963]

Ray Kenneth Epling, being first duly sworn, deposes and says:

I am an Inspector employed by the United States Food and Drug Administration, presently stationed in Baltimore, Maryland.

On January 4, 1963, I accompanied Deputy United States Marshals for the District of Columbia in their seizure of a number of E-meter devices and a quantity of literature on the premises of 1810, 1812, and 1827 - 19th Street, N.W., Washington, D.C.

On the premises at 1810 - 19th Street, I observed it explained to Mr. L. John B. Fudge, Organizational Secretary and Assistant Pastor, The Founding Church of Scientology, Inc., Washington, D.C., that the Marshals were there to execute a warrant of attachment issued by the United States District Court for the District of Columbia calling for the seizure of all Hubbard Electrometers, E-meters, etc. and all copies of certain pieces of literature named in the warrant. This same explanation was made to each individual encountered or who questioned the activities of the Marshals on the premises at 1810, 1812, and 1827 - 19th Street, N.W.

On the second floor at 1810 - 19th Street, a locked door was encountered. The woman receptionist who accompanied the Marshals from the first floor stated that the room was in use and could not be entered. The Marshals explained that they were obliged to examine the room and indicated they would prefer for the door to be opened voluntarily. One of the Marshals knocked on the door, and it was unlocked and opened from the inside. The explanation was repeated to the woman opening the door as to why the Marshals were there. Examination of the room was then permitted. A meter which was in use in the room was taken after the Marshal suggested that the person asserting ownership might want to mark it for later identification; it was so marked.

Shortly after I arrived in the vicinity of 1810-19th Street, I learned and observed that there were some newspaper reporters and photographers in the vicinity. I did not see any of the press representatives enter any of the premises beyond the doorway of 1810. I did not see any Marshals or inspectors conversing with the pressmen, nor did I do so myself.

I was carrying a camera during the early portion of the examination of these premises. I was questioned by both Anton James and John Fudge as to my identity and identified myself to both as Food and Drug Inspector.

Shortly after arrival on the premises of 1810 - 19th Street, I observed that the Marshal at the rear door of the building had three E-meters. The Marshal stated he had taken the meters from two persons who attempted to remove the E-meters from the premises by leaving through the back door with meters concealed under their coats.

Early in the examination of 1812 - 19th Street, I proceeded to a cloak room on the first floor and noted a number of E-meters in small open satchels, briefcases, etc. under a clothesrack. When I returned to the same room with a Marshal I found that the meters had been removed from the containers which were still there.

In the basement of the building, I encountered approximately seven pairs of individuals using E-meters. I told those persons that the Marshals were taking the meters pursuant to a warrant and suggested that the meters be marked for later identification and he packed in their cases. The Marshal who appeared to collect the meters explained his activities, and collected the meters after the people marked them.

I visited the front room on the second floor of 1812 where a number of E-meters were located in open briefcases. No one else was in this room when I first entered it. A young man who appeared to be a part of the organization came in shortly after I did and offered to pack up the meters. He removed the meters from the briefcases, and displayed considerable familiarity with them in locating the wires to go with the meters and placing the wires inside the meter cases. A Marshal then came in and collected the meters.

In the snack-bar area I was advised by a Marshal that a lady member had attempted to slip out of the building with an E-meter; he stopped her. Later, she attempted to hide the meter in the back of a soft drink dispensing machine in the snack-bar area.

I participated in examinations on the premises at 1810, 1812, and 1827 - 19th Street. I observed that, in every case, the persons from whom meters were personally collected were given an opportunity to mark them for identification. No physical force or coercion was seen to be exercised by any of the Marshals or any other government representative. To my knowledge there were no threats of physical violence or bodily harm to anyone and there was no violence or bodily harm. No firearms were displayed.

The meters and literature I observed was found throughout the buildings in bookcases, briefcases, on mantels, in desk drawers, in closets, in filing cabinet drawers, as well as in packages and boxes in stock rooms.

[Filed March 11, 1963]

Michael F. Karpers, being first duly sworn, deposes and says:

I am an Inspector employed by the United States Food and Drug Administration, presently stationed in Baltimore, Maryland.

On October 17 and 18, 1962, I visited in an official capacity The Distribution Center, Inc., The Hubbard Guidance Center, and The Founding Church of Scientology, Inc., Washington, D.C. At that time, Mr. Bonnie B. Turner, Vice President, The Distribution Center, Inc. and In Charge, The Hubbard Communications Office, informed me that rooms in the various buildings at 1810, 1812, and 1827 - 19th Street, N.W., and 1907 S Street, N.W., Washington, D.C. had previously been rented to students, but that that practice was now being stopped.

On January 4, 1963, I accompanied Deputy U.S. Marshals in their seizure of a number of E-meter

devices and a quantity of literature on the premises of 1810, 1812 and 1827 - 19th Street, N.W., and 1907 S Street, N.W., Washington, D.C.

At approximately 2:48 p.m., in the company of several Deputy United States Marshals, I entered the premises of the Hubbard Guidance Center, 1907 S Street, N.W. Our presence was explained to Mrs. Beverly Bourquin, Administrator, who stated that the meters were being used in "treatments we give here" and that they would not be available immediately.

At that time, Mr. Wayne Rohrer, Director of Processing, Hubbard Guidance Center, came up to the desk where we were standing and asked who we were, and why we were there. It was explained to Mr. Rohrer that the Marshals were there to execute a warrant of attachment issued by the United States District Court for the District of Columbia calling for the seizure of all Hubbard Electrometers, E-meters, etc. and all copies of certain pieces of literature named in the warrant.

Mr. Rohrer accompanied us into his office, at which time two meters were collected. At that time, Mr. Rohrer voluntarily offered the information that some of the rooms would be locked and stated that he would unlock all doors which might be locked throughout the three floors of the building so as to facilitate collection of the meters and literature. Mr. Rohrer further volunteered to go along with us, interrupt the sessions which were going on at that time, and explain to the persons involved that the Marshals had a right to take the meters and literature.

During this period, in looking out of the back door, I observed a young woman walking up the alley away from the buildings carrying four E-meters — two in each hand. I called over to the Marshal who had just arrived at the back door of 1810, 1812 - 19th Street, N.W., and pointed her out to him. I saw him go out into the alley and saw that she went back into the building with him.

I then joined the Marshals and Mr. Rohrer and we went up to the second floor. Mr. Rohrer went on ahead, opened doors and interrupted the sessions as he had offered to do. The Marshals removed the meters and literature which were found in the rooms.

Each person from whose possession a meter was taken, was asked if he would like to put his name or some other identification on the particular article involved and many did so.

At one point during this examination, we entered a room on the third floor and a Deputy went to pick up the E-meter which was on the table in plain view. A woman ran into the room and tried to stop him. Mr. Rohrer came in and told her that the Marshal had a right to take the meter. The Marshal asked her if she wanted to put her name on the meter, which she did.

Meters and literature were found throughout the building including closets, suitcases, cabinets, etc. and the basement of the building where was located two large boxes containing approximately 50 to 55 meters, and a large box containing back issues of Ability magazine. Nothing was disturbed in any part of the building any more than was necessary to remove the meters and literature found.

No force or threats were used at any time. Mr. Rohrer was extremely cooperative and voluntarily consented to assist the Marshals in their examination of the premises for meters and literature called for in the Monition.

During a brief period that I spent in 1812 - 19th Street, N.W., I observed the collection of copies of literature called for in the Monition in a number of briefcases underneath a coat rack.

During a brief period in the building at 1827 - 19th Street, N.W., I assisted the Marshals in examining a large bookcase located in one of the rooms for literature called for in the Monition; we spent approximately

45 minutes at this. During all of this time, a woman who acted as receptionist for the Hubbard Communications Office stood by taking down an inventory of the literature collected.

I then went to an office on the second floor of the building, in the front. There was a sealed cardboard box on the floor which one of the men connected with the Hubbard Communications Office voluntarily opened up. The box contained an E-meter, which the Marshal present there collected.

In both 1812 and 1827 - 19th Street, I observed the collection of meters and literature from rooms throughout the buildings.

[Filed March 11, 1963]

Donald A. Thiel, being first duly sworn, deposes and says:

That I am an Inspector with the United States Food and Drug Administration, presently assigned to Baltimore, Maryland.

That on January 4, 1963, in the course of my official duties, I accompanied several United States Marshals for the District of Columbia in the execution of a Warrant of Arrest for the E-meter and certain designated literature.

At about 3:00 p.m., the Marshals and I entered the premises of 1827 - 19th Street, N.W., Washington, D.C., and went up to the second-floor offices of the Hubbard Communications Office. It was explained to the receptionist there that the purpose of our visit was to execute the Warrant of Arrest for the E-meter and certain specified literature. This explanation was repeated to, among others, Betty James, Bonnie B. Turner, and Anton James, individually, as each joined the group. Betty James asked the Marshals if they would wait until she contacted their attorney and

the Marshals agreed. Betty James then made a phone call in the presence of myself and the Marshals. From the phone conversation it was apparent that the attorney was not in his office and Betty James requested that he call as soon as he came in. In addition, others used the telephone in what also appeared to be an effort to contact a lawyer. During this period Mr. Turner photographed myself and a couple of the Marshals. After approximately 30 minutes, the Marshals informed the group that they would have to proceed to carry out the Order of the Court to attach the devices and literature.

The receptionist obtained keys, opened all locked doors, and permitted entry to all rooms.

Examination of the rooms on the fourth and third floors, including closets and any drawers or containers large enough to contain an E-meter, resulted in the location of several E-meters and a quantity of literature which were taken by the Marshals. In the course of this examination, the receptionist accompanied us. From time to time we paused so that she could record an inventory of the material taken.

In the second-floor office of the Hubbard Communications Office literature was found in the cabinets and in bookcases.

During the entire time spent at this address, the various individuals encountered in the building offered no resistance to the examination of the premises. The Marshals exercised no physical force, searched no one, made no threats of violence or coercion in my presence, did not refer to the proceedings as a "raid", and did not display or draw any firearms. When we had completed our examination, the receptionist stated to the Marshals that she appreciated their polite conduct and the way they had handled themselves and the examination.

[Filed July 3, 1963]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

Libelant

v.

District Court
No. 1-63

An article of device . . .
"HUBBARD Electrometer",
etc.,

Claimant

ORDER

The motion of the claimant to quash the attachment, to require return of the seized property, and to dismiss the libel of information came on to be heard before this Court on April 2, 1963. Upon the oral arguments and briefs submitted and upon all the files and proceedings herein, it appearing that the search and seizure attacked by the claimant was unobjectionable under the Rules of Practice in Admiralty and Maritime Cases and under other legal and constitutional principles, and it appearing further that claimant's contention that said search and seizure and this libel violate the First Amendment's guarantees of religious liberty is more properly asserted as a matter of defense at the trial, therefore it is by the Court this 3d day of July, 1963,

ORDERED That claimant's motion be and the same is hereby denied.

/s/ Luther W. Youngdahl
Judge

[Filed July 21, 1963]

[Caption omitted in printing]

ANSWERS OF CLAIMANTS

Come now the claimants named in the praecipe heretofore filed in their behalf on January 24, 1963, by their attorneys of record in this case, and for their answers severally state as follows:

A. With respect to the allegations of the various paragraphs of the libel of information:

1. The claimants admit the allegation of paragraph 1 that the libel of information was filed by the United States of America but deny the remainder of said paragraph.

2. The claimants deny the allegations of paragraph 2 that the articles described are devices within the meaning of 21 U.S.C. 321(h), that any of the material specified in said paragraph constitutes labeling for such articles, and that any of the material specified in said paragraph is used for promoting sales of the articles or sales of services with the articles.

3. The claimants deny the allegations of paragraph 3.

4. The claimants deny the allegations of paragraph 4 and aver that possession and ownership of the property seized was in them at the time of seizure as shown in the praecipe and claim heretofore filed in this cause on their behalf.

5. The claimants deny the allegations of paragraph 5.

B. As further and separate defenses, the claimants state as follows:

FIRST DEFENSE

The Court lacks jurisdiction over the subject matter of this action in that all or said property is used in the proper and lawful exercise of a religion practiced or studied by claimants and taught by the Founding Church of Scientology of Washington, D.C., and its affiliated churches and organizations.

SECOND DEFENSE

The process issued in this action is insufficient in that there is lacking a proper and valid warrant authorizing the seizure of claimants' property, and the warrant issued failed to authorize the search of church religious premises and the seizure of church and claimants' religious property.

THIRD DEFENSE

There was an insufficiency of service of process in that private property was seized from claimants without delivery to them of a valid warrant or other valid process.

FOURTH DEFENSE

The libel, and each count and paragraph thereof, fails to state a claim or complaint upon which relief can be granted.

FIFTH DEFENSE

The searches of claimants' premises and the seizures of claimants' property were unreasonable and unlawful and in violation of the Fourth Amendment to the Constitution of the United States of America in that:

1. Such searches and seizures were not conducted pursuant to a warrant issued upon a showing of probable cause, supported by oath or affirmation; and
2. The premises searched and property seized were not particularly described in the libel or warrant issued thereunder, including places of residence.

SIXTH DEFENSE

The searches of claimants' property and the seizures made therein were in violation of the First Amendment to the Constitution of the United States in that:

1. They were made in and upon premises used by a church for religious worship and religious and spiritual instruction and thereby obstructed and interfered with the conduct and free exercise of a religion; and

2. They involved the confiscation by the Federal Government of material used solely in the instruction and practices of the religion known as Scientology and thereby obstructed and interfered with the conduct and free exercise of a religion; and

3. They involved the confiscation by the Federal Government of books, pamphlets, and other printed and published matter and thereby abridged and denied to the claimants the rights of free speech and of the press.

SEVENTH DEFENSE

The claimants aver that the meters seized were intended for use and used for confessional purposes as part of the religious activities of the Founding Church of Scientology of Washington, D.C., and its affiliated churches and religious organizations, including schools for instruction in the principles and practices of the religion known as Scientology which seeks to develop and improve the spiritual welfare of mankind; and further aver that the meters were intended for and used in the confessional practices of the Church and its members and adherents seeking religious or spiritual education, betterment, or help and, by reason of such use, are not properly subject to the jurisdiction of this Court under the provisions of the Federal Food, Drug, and Cosmetic Act.

WHEREFORE, the claimants herein pray that this Honorable Court find that the seizure and taking from them of their possessions and personal property was unlawful and invalid; and claimants pray further that the Libel of Information be dismissed, the warrant discharged, and that the property taken from claimants be returned to them in undamaged condition; and, further, that the claimants and each of them be awarded damages for the unlawful seizure and detention of the property seized, together with their costs in this behalf incurred including reasonable attorneys' fees.

/s/ Oscar H. Brinkman
Attorney for Claimants

DEMAND FOR TRIAL BY JURY

Claimants hereby demand a trial by jury of the issues herein.

/s/ Oscar H. Brinkman
Attorney for Claimants

[Certificate of Service]

[Filed August 20, 1963]

[Caption omitted in printing]

MOTION TO STRIKE PORTIONS OF
"ANSWERS OF CLAIMANTS."

The United States of America, Libelant herein, by David C. Acheson, United States Attorney, for the District of Columbia, moves this Honorable Court for an Order, pursuant to Rule 12(f) of the Federal Rules of Civil Procedure, striking the "Second Defense," "Third Defense," "Fifth Defense," and portions of the "Sixth Defense" of the "Answers of Claimants" for the following reasons and upon the following grounds:

1. On February 25, 1963, Claimants filed a Motion to Quash Attachment and Monition, Et Cetera, To Require Return of Seized Property, and to Dismiss the Libel of Information, based upon the following ground:

(a) The search and seizure was unreasonable and unlawful, and in violation of the Fourth Amendment to the Constitution of the United States, in that:

(i) There was no finding of probable cause before the warrant of seizure was issued

(ii) The Libel of Information was unverified.

(b) The search and seizure was in violation of the First Amendment to the Constitution of the United States, in that:

(i) The corporate claimant is a church and the individual claimants are its adherents, and the seizure violated freedom of religion

(ii) The various written, printed and graphic matter which was seized as labeling within the meaning of 21 U.S.C. 321(m) was seized in violation of freedom of the press.

2. On April 2, 1963, in open court, Judge Youngdahl of this Court heard oral argument on Claimants' Motion.

3. On April 5, 1963, pursuant to permission granted by Judge Youngdahl, Claimants filed an additional memorandum in support of their motion, in which they assert that they do not contend they are immune from actual violations of law because they are a church and its adherents, but that the search and seizure was invalid on the following grounds:

(a) Because there was no issuance of a warrant based upon probable cause determined by a judicial officer.

(b) Because there was no oath or affirmation.

(c) Because the search warrant:

(i) Was too general

(ii) Did not specifically describe the places to be searched

(iii) Described the literature seized as labeling within the meaning of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 321(m).

4. On July 3, 1963, this Court issued the following Order [Exhibit A attached to this Motion]:

The motion of the claimant to quash the attachment, to require return of the seized property, and to dismiss the libel of information came on to be heard before this Court on April 2, 1963. Upon the oral arguments and briefs submitted and upon all the files and proceedings herein, it appearing that the search and seizure attacked by the claimant was unobjectionable under the Rules of Practice in Admiralty and Maritime Cases and under other legal and constitutional principles, and it appearing further that claimant's contention that said search and seizure and this libel violate the First Amendment's guarantees of religious liberty is more properly asserted as a matter of defense at the trial, therefore it is by the Court this 3d day of July, 1963,

ORDERED, That claimant's motion be and the same is hereby denied.

/s/ Luthur W. Youngdahl
Judge

5. On July 31, 1963, Claimants filed the "Answers of Claimants" which contains the following asserted "defenses":

SECOND DEFENSE

The process issued in this action is insufficient in that there is lacking a proper and

valid warrant authorizing the seizure of claimants' property, and the warrant issued failed to authorize the search of church religious premises and the seizure of church and claimants' religious property.

THIRD DEFENSE

There was an insufficiency of service of process in that private property was seized from claimants without delivery to them of a valid warrant or other valid process.

* * *

FIFTH DEFENSE

The searches of claimants' premises and the seizures of claimants' property were unreasonable and unlawful and in violation of the Fourth Amendment to the Constitution of the United States of America in that:

1. Such searches and seizures were not conducted pursuant to a warrant issued upon a showing of probable cause, supported by oath or affirmation; and

2. The premises searched and property seized were not particularly described in the libel or warrant issued thereunder, including places of residence.

SIXTH DEFENSE

The searches of claimants' property and the seizures made therein were in violation of the First Amendment to the Constitution of the United States in that:

* * *

3. They involved the confiscation by the Federal Government of books, pamphlets, and other printed and published matter and thereby abridged and denied to the claimants the rights of free speech and of the press.

6. Based upon the Order of this Court dated July 3, 1963, and the matters considered therein and ruled on thereby, the "defenses" set forth in paragraph 5 of this Motion are insufficient, having already been ruled upon by this Court, and should be stricken.

Respectfully submitted,

/s/ David C. Acheson
United States Attorney

/s/ Charles T. Duncan
Assistant United States Attorney

/s/ Joseph M. Hannon
Assistant United States Attorney

[Filed October 11, 1963]

[Caption omitted in printing]

ORDER

Upon consideration of the motion of the United States of America, Libelant herein, to strike portions of the answers of the claimant heretofore filed in this cause, and the opposition thereto, and after hearing oral arguments thereon by counsel for the respective parties, and it appearing to the Court that the previous ruling by Judge Youngdahl denying claimants' motion to quash the attachments herein finally disposed of the several issues raised by the challenged answers adversely to the claimants and the Court being of the view that the trial judge is bound to recognize such ruling, but it further appearing to the Court that the claimants are entitled to maintain throughout the record the validity of the challenged defenses and to preserve for appellate purposes the issues raised by such defenses, it is by the Court, this 11th day of October, 1963,

ORDERED, That the libelant's motion to strike certain answers of the claimants is hereby denied,

the denial being for the sole purpose of permitting the claimants to contend in any appellate proceedings for the validity of the defenses raised by the answers libelant sought to strike in its motion.

/s/ Tamm
Judge

Seen:

/s/ Oscar H. Brinkman

[Certificate of Service]

[Filed October 5, 1964]

[Caption omitted in printing]

**MOTION TO QUASH ATTACHMENT OF BOOKS,
PAMPHLETS, AND OTHER PRINTED MATTER
AND TO RETURN SUCH PROPERTY TO THE
CLAIMANTS.**

Now come the claimants herein and by their attorney of record move: (1) To quash the writ of attachment of the books, pamphlets, and other written and printed matter unlawfully seized under the libel, writ, and warrant in this case and which are now in the custody of the Court; (2) to order the return of said property to the claimants; and (3) to ascertain the damages to claimants resulting from the unlawful seizure and detention of said property and enter judgment therefore against the libelant herein; and, as grounds for this motion, the claimants show to this Honorable Court:

1. That the said written and printed matter was neither labeling nor a device within the terms and meaning of the Act alleged by libelant as the legal basis for the issuance of the warrant and the attachment and seizure herein.

2. That the said written and printed matter was not subject to attachment or seizure under any law of the United States of America.

WHEREFORE the claimants herein pray that this Honorable Court find and determine that the attachment and seizure of the aforesaid property were illegal and in violation of the claimants' Constitutional rights, and that the Court direct the return of said property to the claimants as their interests appear and award to them damages for its seizure and unlawful detention.

/s/ Oscar H. Brinkman
Attorney for Claimants.

[Certificate of Service]

[Filed October 27, 1964]

[Caption omitted in printing]

ORDER

Upon consideration of the Motion to quash attachment of books, pamphlets and other printed matter and to return property to claimants filed herein October 5, 1964, it is this 28th day of October, 1964,

ORDERED that the motion be, and the same hereby is denied.

HARRY M. HULL, Clerk

/s/ Eulalia M. Koester
Deputy Clerk

Edward A. Tamm,
Presiding Judge

[Filed April 3, 1967]

[Caption omitted in printing]

**CLAIMANTS' MOTION TO SUPPRESS EVIDENCE
ILLEGALLY SEIZED IN VIOLATION OF THE
FOURTH AMENDMENT**

COME NOW CLAIMANTS by counsel and move this honorable court for an order suppressing for use as evidence all of the physical evidence seized during the raid on January 4, 1963.

For grounds therefore claimants show from the record to date in this case that this search and seizure followed and was in whole or in part the result of the illegal or unconstitutional placing of a Government spy on the premises of the Founding Church of Scientology, which illegal and unconstitutional act has rendered inadmissible in evidence and subject to this Motion to Suppress, all of the evidence seized during said raid.

In support therefore, from the record of this case, claimants direct the court's attention to the Government's answer to claimants' interrogatory No. 11 as follows:

2

Interrogatory 11:

If an investigation has been or is being conducted by the Libellant's agents, servants or employees, state whether any employees or agent of the United States has attended or participated in the activities of the Founding Church of Scientology, ever attended a service conducted in the Church or has ever enrolled as a student in the Academy of Scientology.

Answer:

Yes.

The Government on November 25, 1966 listed Taylor Quinn as a witness. The Founding Church of Scientology then discovered that name on its student

records; Taylor Quinn is an employee and has been for many years an employee of the Food and Drug Administration. It is undisputed that Taylor Quinn was enrolled covertly and secretly as a student in the Founding Church of Scientology and conducted spying activities therein.

In addition, Mr. M. D. Kinslow, Director of Legislative Services of the Food & Drug Administration was asked in a letter by Senator Long of Missouri (Chairman of the Administrative Practices Subcommittee of the Senate Judiciary Committee) the following question:

Question:

"Was any agent or employee of FDS ever enrolled as a student of the Church of Scientology, including Taylor Quinn?"

The Food and Drug Administration answered as follows:

Answer:

"Yes. Mr. Quinn was sent to enroll as any other citizen would enroll. He was to determine whether this organization was offering articles in violation of the Food & Drug Act."

The above letter was dated on or about November 14, 1966, and provided the confirmation of Movants' suspicions that the Government's case was based on illegal spying activities, since in an earlier letter from the Food & Drug Administration to Senator Long dated May 24, 1965, Commissioner George P. Larrick had responded to the following question as follows:

"With regard to 'the number of spies planted by the Food & Drug Administration in the Church', the answer is '... None.'" The above, being less than frank in the premises, misled Senator Long, and surely misled claimants.

Finally, in a story appearing in the Evening Star newspaper the day of the raid, it was stated under the subheading AGENT POSES AS STUDENT "The Government action followed a month-long investigation in which a Food & Drug inspector posed as a student of the Academy of Scientology.

There is no question but what the state of the law is on the subject is that if the information leading to the raid was in whole or in part gained by the Government as a result of an unconstitutional act, which include a covert spying activity on the part of a Government agent, the fruits of the raid and search and seizure are inadmissible in evidence in a subsequent forfeiture case such as this, and are subject to a Motion to Suppress, all as will be further detailed in the memorandum of points and authorities attached hereto.

SHAW, PITTMAN, POTTS
THROWBRIDGE & MADDEN

/s/ Murdaugh Stuart Madden
Attorneys for Claimants

[Certificate of Service]

Denied 4/17/67

[Filed April 6, 1967]

CLAIM

And now appears OSCAR H. BRINKMAN, attorney at law, intervening on behalf of Bud Love, Michael Moran, Pem Wall, Wayne Rohrer, Janet Tucker, Helen Hancock, Marguerite Edelstein, D. M. Hoskins, Ann Horner, David Hancock, Anton James, Doris Lam Lambright, W. S. Gibbons, Harris Angell, J. Angell, Natalie Fisher, Jean Reeve, R. M. Conway, Fred Walker, Fred Payer, G. H. Hancock, H. W. More III, R. G. Stevens, S. L. King, A. L. Horner, John J. Gillispie, D. S. Hancock, Paul M. Breedon, Maurin Akin, J. F. Wooten, Marie Boruck, Werner Behnke, M. V. Hermann, David K. Foster, W. F. Knop III, Wayne Rohrer and Marilyn Routsong, owners of Hubbard Electrometers (Mark IV) Nos. 651, 835, 747, 865, 262, 727, 726, 683, 295, 763, 901, 317, 404, 531, 455, 408, 966, 485, 218, 330, 352, 290, 954, 348, 492, 423, 370, 636, 778, 704, 718, 748, 782, 500, 841, 735, 891 and 790 and Hubbard Electrometers (Mark V) Nos. 1483/3 and 1483/52, respectively, and makes claim on their behalf to the aforesaid meters, which meters have been proceeded against at the instance of the United States of America, the Libellant, and avers that the individuals named above have authorized him to make this claim on their behalf, and further avers, upon information and belief, that said claimants were at the time of filing of the libel of information, and still are, the true and bona fide owners of the aforesaid meters and that no other persons are the owners thereof; wherefore he prays on their behalf to defend accordingly.

/s/ Oscar H. Brinkman

VERIFICATION

Oscar H. Brinkman, being duly sworn, deposes and says:

I am the individual who executed the foregoing claim. I have read the claim and know the contents

thereof, and the same is true to my own knowledge, except as to matters therein stated to be upon information and belief, and as to those matters I believe them to be true.

/s/ Oscar H. Brinkman

[Filed April 6, 1967]

And now appears the Founding Church of Scientology of Washington, D.C. intervening for itself as owner of 61 Electrometers (American make), 11 Hubbard Electrometers (Mark IV), Nos. 119, 268, 273, 387, 471, 492, 542, 691, 932, 944, 9 parts of chassis, 3 boxes of tin cans and all the printed matter seized on January 4, 1963, by Deputy U. S. Marshals, and makes claim to said meters and printed matter, which have been proceeded against at the instance of the United States of America, the Libellant, and the claimant avers that it was at the time of filing of the libel of information, and still is, the true and bona fide owner of the seized meters and printed matter, and that no other person is the owner thereof, wherefore it prays to defend accordingly.

The Founding Church of Scientology
of Washington, D. C.

/s/ John Fudge
President and Legal Officer

VERIFICATION

John Fudge, being duly sworn, deposes and says:

I am President and Legal Officer of the Founding Church of Scientology of Washington, D.C., the claimant described in the foregoing claim. I have executed said claim in my capacity as an officer of the claimant. I have read the claim and know the contents thereof, and the same is true to my own knowledge, except as to matters therein stated to be upon infor-

mation and belief, and as to those matters I believe it to be true.

John Fudge

[Filed April 6, 1967]

CLAIM

And now appears EUNICE FORD, intervening for herself as owner of Hubbard Electrometer (Mark IV) No. 257, and makes claim to said meter, which has been proceeded against at the instance of the United States of America, the Libellant, and the claimant avers that she was at the time of filing of the libel of information, and still is, the true and bona fide owner of the Hubbard Electrometer (Mark IV) No. 257, and that no other person is the owner thereof, wherefore she prays to defend accordingly.

/s/ Eunice Ford

VERIFICATION

Eunice Ford, being duly sworn, deposes and says:

I am the claimant described in and who executed the foregoing claim. I have read the claim and know the contents thereof, and the same is true to my own knowledge, except as to matters therein stated to be upon information and belief, and as to those matters I believe it to be true.

/s/ Eunice Ford

EXCERPTS FROM PROCEEDINGS

[90] CHARLES H. EVERLINE

was called as a witness by the Government and having been duly sworn was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DODELL:

* * *

[91] Q. By whom are you employed? A. I am employed by the U. S. Food and Drug Administration.

Q. Where, Mr. Everline? A. I am employed in Nashville, Tennessee, as the resident inspector.

Q. Were you formerly stationed at Baltimore, Maryland? A. Yes, I was.

Q. Could you give the dates, please, that you were stationed in Baltimore? A. I was stationed in Baltimore from July 12, 1959 until January 20, 1963.

Q. During that period in the course of your duties did you have occasion to make an inspection of the Distribution Center, Inc., in Washington, D.C.? A. Yes, I did.

Q. Did you also make an inspection of the Hubbard Communications Office? A. Yes.

Q. Did you visit the Founding Church of Scientology of [92] Washington, D.C.? A. Yes, I did.

Q. Did you visit the Hubbard Guidance Center? A. Yes, sir.

Q. On what date were the inspections and visits made? A. On October 17 and 18, 1962.

* * *

Q. Would you describe the procedure that you followed when you approached the Distribution Center to make an inspection? A. Yes. The procedure is to enter the building that you wish to make an inspection of or the first building that you arrive at associated with a group of buildings, if there is more than one, introduce yourself, and tell the person that you are speaking with that you wish to make an inspection, and the

name of the firm that you wish to make an inspection of.

In this particular case this is what we did.

* * *

Q. In this case, whom did you introduce yourself to? [93] A. We were — we introduced ourselves and showed our credentials to Mr. Boney B. Turner.

Q. Did Mr. Turner identify himself in any way during the course of this inspection? A. Yes, he did.

Q. How did he identify himself? A. Mr. Turner stated that he was in charge of the Distribution Center, Inc., and the Hubbard Guidance Center — correction, the Hubbard Communications Office.

Q. Now what object was covered by this inspection? A. The Electrometer or E-Meter.

* * *

[95] Q. Was the use of that instrument shown to you at all during the course of the inspection? A. Yes, it was.

Q. Who showed you the use of that instrument? A. It was demonstrated by Mr. Harris Richardson Angell.

* * *

Q. Did Mr. Angell identify himself to you? A. Yes, he did.

Q. How did Mr. Angell identify himself? A. He stated that he was Special Director of Training of the Hubbard Academy or the Academy of Scientology.

* * *

[97] Q. Now, Mr. Everline, could you show the ladies and gentlemen of the jury the method in which the E-Meter was demonstrated to you during the course of the inspection?

* * *

THE WITNESS: The meter was set up by using the lid in a reverse fashion so that the meter sat at a 45 degree angle (demonstrating).

The person using the meter sat behind the meter so that he could read the dial which is on the face of it and could use the knobs.

[98] And the person that was holding the tin can sat on the other side of the meter.

THE COURT: What was the person seated in front of the instrument called?

THE WITNESS: He was referred to — he is generally referred to as an auditor, Your Honor.

THE COURT: All right.

THE WITNESS: The plug on the cord is plugged into the one side, the right side of the meter and the alligator clips on the ends of the cords attach to — were attached to the tin cans and the person on whom the meter was being used or being, in this case, demonstrated, held the tin cans in his hands and sat on the other side of the meter away from the dial.

BY MR. DODELL:

Q. Now, who was present, Mr. Everline, when this demonstration took place? A. Myself, Inspector Michael Karpers of the Baltimore District of Food and Drug Administration, Mr. Angell, and Mr. Turner.

* * *

[104] Q. *** Did Mr. Turner explain the functions of the various organizations? A. Yes, he did.

* * *

[105] A. *** Mr. Turner stated that the purpose and the function of the Distribution Center, Inc., was to sell and disseminate information on scientology to members of Scientology and to the general public and that this material which he mentioned included pamphlets, literature, books and the E-Meter.

He stated that the Hubbard Communications Office was not a corporation and he at first said it was a branch of the Founding Church of Scientology and later said that it was affiliated with the Founding Church.

He stated that the purpose of this office was to maintain lines of communication between Mr. L. Ron Hubbard and the various organizations in scientology, both to disseminate communications and to receive communications.

Another organization that he mentioned was the Hubbard Association of Scientologists International,

which he stated was a District of Columbia Corporation which was a [106] membership organization for members of Scientology to which they paid dues and for which they received a monthly magazine called Ability in this country, and it went by other names in other countries.

And he stated also that this was the oldest of the existing organizations.

Here again he did not know the officers of this corporation but he stated that he believed L. Ron Hubbard, and Mary Sue Hubbard were officers and he did know that Mr. Herbert Parkhouse was the Treasurer of this organization.

He also discussed the Founding Church of Scientology which he said was a District of Columbia corporation, which had as branches the Academy of Scientology and another branch was the Hubbard Guidance Center and still a third branch was the Personal Efficiency Foundation which he stated was not active at the present time.

* * *

Q. Did you discuss the cost of the E-Meter with Mr. Turner? A. Yes, I did.

Q. Did he say what that cost was?

* * *

[111] A. He stated that the retail cost of the meter was \$125.

Q. Did Mr. Turner discuss the use of the E-Meter?

A. Yes, he did.

Q. What did he say about the use of the E-Meter?

A. He stated that the E-Meter was used by auditors in processing people or individuals and that the E-Meter must be used in processing.

* * *

[112] Q. *** What did Mr. Angell tell you about the use of the E-Meter? A. He stated that the E-Meter was used as a valuable [113] tool in processing individuals and that it was necessary to use it in this processing.

* * *

[123] Q. Mr. Everline, you had been discussing a conversation that you had with a Mr. Angell.

Now in connection with that conversation did you discuss with him the class or category of persons who might be admitted to the Hubbard Guidance Center? A. Yes, I did.

Q. And what did he state as to the class of people that might be admitted to the Guidance Center? A. He said first of all the general public could be and was admitted to the Guidance Center, or in other words, anyone who was interested.

Q. Did you ask him for what purpose people might be admitted to the guidance Center? A. Yes.

Q. And what did he say in answer to that question? A. He said that people were admitted to the Guidance [124] Center for processing.

Q. Did you question Mr. Angell about processing by the Guidance Center? A. Yes, I did.

Q. Could you tell us what you asked him and what he answered? A. Well, I asked him first of all if they admitted sick people for processing, people with physical ills and he stated that they did not and I then asked him if they admitted people with psychosomatic ills to the Guidance Center and he stated that they did admit such people and that they did not treat the physical condition that might be manifest by the psychosomatic illness but rather they treated the cause and that by treating the cause the condition itself could disappear.

* * *

Q. During the course of your inspection, Mr. Everline, did you see any material posted on bulletin boards or the like that explained the purposes of any of the branches of the church or its affiliated organizations?

A. Yes, I did.

* * *

[125] Q. Now, can you tell us what organizations or branches the posting dealt with? A. It dealt with the Academy of Scientology and the Hubbard Guidance Center.

Q. What did the posting say as to the purpose or say as to the Academy of Scientology? A. It stated

that the purpose of the Academy of Scientology was to train the best auditors in the world.

* * *

[126] Q. What did that state as to the purpose of the Hubbard Guidance Center? A. It stated that the purpose of the Hubbard Guidance Center was to do more for people's health and ability than has ever before been possible and to give the best auditing possible to help people.

* * *

Q. *** Could you tell us, please, the substance of the conversation that you had with Mr. Fudge?

* * *

[127] A. Mr. Fudge stated that persons could be admitted to the Hubbard Academy of Scientology or the Guidance Center without having any interest in the Founding Church of Scientology or without joining the Founding Church.

* * *

[129] Q. *** Did you issue any or hand any document to the person at that time? A. Yes, I did.

Q. And what was that, Mr. Everline? A. It is called a Notice of Inspection.

Q. Could you tell us briefly what that notice is? A. This is an official notice of intent to inspect which is required by law to be issued to any organization that we intend to make an inspection of.

* * *

[130] Q. Mr. Everline, were those two notices [Government Exhibits 4 and 5] the notices that were served on Mr. Turner at the time of the inspection? A. Yes, they are.

Q. Yesterday, Mr. Everline, you identified Government Exhibit No. 1 which was introduced, and that was this object.

[131] Did you see similar objects during the course of your inspection? A. Yes, I did.

Q. Where did you see such instruments? A. I saw them at various places and in various rooms throughout the four buildings that I visited during the inspection.

* * *

[134] Q. What did he [Mr. Turner] say about the specific types of models? A. He said that there were two basic categories, one was the older American made models which were similar to Exhibit No. 6, the metal box; and also the various models in the wooden boxes were English made models, and these included the Mark I, II, III, IV models, and he said that at the present time they were using the Mark III and the Mark IV, which were English made models.

Q. With reference to these Hubbard E-Meters, I believe yesterday you stated what the cost to a purchaser was.

* * *

Were you told what the wholesale cost was during the course of the inspection? A. Yes.

Q. What was that? A. Mr. Turner stated that the wholesale cost to the Distribution Center was \$47.

* * *

[135] Q. Mr. Everline, did you have any occasion to obtain any publications during the course of your inspection? A. Yes, I did.

Q. Now, can you tell me where you obtained these publications? A. These were obtained from the basement of 1812 19th Street, Northwest.

* * *

[140] Q. Mr. Everline, with regard to the literature that you have said you obtained, was any payment involved in the obtaining of this literature? A. Yes, there was.

Q. How did that work? A. We received an invoice for the cost of the publications which we obtained during the inspection and we marked or signed the invoice and had it submitted to Baltimore District for payment as a normal bill.

* * *

[146] Q. Mr. Everline, a number of publications have been marked for identification. I would like you to examine them, read the Exhibit No. and title and author, if you would and then indicate whether or not were purchased at the time of the inspection you have been discussing?

THE COURT: Let me ask a question. Will counsel stipulate these exhibits were purchased at the time this gentleman made the inspection?

[147] MR. MADDEN: Yes.

THE COURT: Can't you save a lot of time by putting it in the record by that man?

MR. HANNON: Yes, Your Honor.

THE COURT: Tell me what the stipulation is. How many exhibits do you want to stipulate to?

MR. DODELL: The stipulation would be Government Exhibits 10 thru 76 which have been marked for Identification, were purchased by Inspector Everline at the time of the inspection referred to in his testimony.

THE COURT: You agree to that, counsel?

MR. MADDEN: Yes.

* * *

CROSS EXAMINATION

BY MR. MADDEN:

[151] Q. Now, Mr. Everline, what was the purpose of this inspection that you testified to? A. The reason why I went there? I went there on an assignment from Baltimore District which was given me by the chief inspector of the Baltimore District.

Q. What was the purpose of your assignment? You said why you went there, but what was the purpose of it? A. The instructions were to determine if the Distribution Center, Inc., was handling or had plans to handle a product by the name of Dianezen — although that may not be pronounced exactly right.

* * *

And also to determine the manner in which the E-Meter was being sold and promoted.

* * *

Q. Well, you said you received instructions in Government Exhibits 4 and 5 which appear to be a written document having to do with it. Were there and other written instructions that you [152] received in connection with your inspection? A. I received also a copy of a document, a letter, which indicated

that we would make an investigation of the manner in which the E-Meter was being promoted and sold.

Q. What was the date of that letter? A. It was dated approximately two months prior to the time I went there. The exact date I do not recall offhand.

Q. By whom was it signed? A. It was signed by the Deputy Commissioner of Food and Drug Administration, Mr. Harvey.

Q. Is he located in Washington? A. I do not know where he is located now, he was at that time located in Washington.

Q. Did you at the time of this inspection inquire into the Dianezene matter? A. Yes, I did.

Q. And who did you discuss that with? A. With Mr. Turner.

* * *

[153] BY MR. MADDEN:

Q. I note from Exhibits 4 and 5 they are both directed to Mr. Bonnie B. Turner, one under the firm name of Distribution Center and the other under the firm name Hubbard Communications Office, branch of the Founding Church of Scientology. You know where this information as to the corporate name and identification came from, because presumably these were made out and given to you before you had the inspection? A. That information came from Mr. Turner.

[154] Q. You had met Mr. Turner before? A. No, sir, I had not.

Q. Perhaps my question wasn't clear, I'm sorry. These forms, were they made out on the spot —

THE COURT: Excuse me, Mr. Madden. When you say these forms that is not reflected in the record.

MR. MADDEN:

Q. Government Exhibits 4 and 5, did you fill these in on the spot or did you come prepared with these to the inspection? A. These were filled in on the spot.

Q. Oh, so you got the information that is in them from Mr. Turner after you met him? A. That is correct.

Q. Did you discuss with Mr. Turner the possibility that anyone of these organizations might be violating the Food and Drug Act? A. I don't believe we discussed it specifically.

Q. Did you discuss it generally? A. I may have told Mr. Turner that we were there to make an inspection to determine if there was any violation of the Food and Drug and Cosmetic Act. This would be normal procedure.

[155] Q. But you cannot recall having said that in this case, can you? A. I cannot recall specifically, no, sir.

Q. Did you point out to them wherein any of their practices or their devices or their documents might be in violation of the Food and Drug Administration Act — Food and Drug Act? A. I don't recall whether I did.

Q. How many years ago was that inspection? A. Was the inspection? It was in 1962, this is 1967, so it was about 4 1/2 years ago.

Q. Did you make notes at the time of the inspections? A. Yes, I did.

Q. You have those notes? A. They are still in existence, yes, sir.

Q. Is it not customary to advise and warn people that you are inspecting when you see something that might be a violation of the Act? A. In what manner do you mean, sir.

Q. If you went into a food plant and saw rat tracks on the floor would not say there are rat tracks on the floor and you better clean them up? A. Normally, yes, sir.

[156] THE COURT: What bearing does this have on the issues in this case? What bearing does this have?

MR. MADDEN: I think it would tie in —

THE COURT: Suppose you tell me at the Bench.
[At the Bench]

THE COURT: Now what are you trying to develop so I can follow?

MR. MADDEN: If it is absolutely customary and in fact as I will demonstrate, I think later, mandatory for them to point out defects that they see, give warnings, then I feel that it is relevant to this case that they did not do that.

MR. HANNON: He said he didn't recall.

THE COURT: Just a minute. Have you finished?

MR. MADDEN: It goes to the question of whether this is persecution of a religion, whether all this is routine and I think I will tie it together before the case is over.

THE COURT: I'll hear you if you are finished.

MR. HANNON: Pardon me, Your Honor, Mr. Madden says, which he did not do, and as I understand the inspector's testimony, he said "I don't recall whether I did or didn't." Now I think it is not germane —

THE COURT: Suppose he did or didn't? This man obviously had a right to go there, he was sent there by his superior to make [157] an inspection. Do you contend he didn't have a right to go in there and do what he did?

MR. MADDEN: Yes, but I think if he then seen things wrong, didn't say to these people, "Look, you better get rid of the meter or stop using it —

THE COURT: Do you have any law to that effect he has to tell people?

MR. MADDEN: I think it goes to whether or not this is a religious prosecution.

* * *

[158] BY MR. MADDEN:

Q. Mr. Everline, did you purchase a copy of every single document that you saw during this inspection?

A. I don't believe I did.

Q. How did you pick or choose the ones you did purchase and the ones you didn't? A. We primarily picked the documents that were currently being used or were current pieces of literature.

Q. How did you determine which ones were currently being used? A. This information was primarily obtained from the stock clerk in the Distribution Center.

Q. - What was the name of the stock clerk if you recall? A. Mr. Gilbert Nehaus or Nechoos (phonetic spelling).

Q. Do you recall what question you asked him to get this response and description of the documents?

A. I don't recall the specific question but it would have been along the line of what literature do you have on hand that is currently being used.

* * *

[170]

JOHN I. LACEY

called for examination by the United States of America, having been duly sworn, was examined and testified as follows:

* * *

DIRECT EXAMINATION

BY MR. DODELL:

* * *

Q. Could you tell us what your occupation or profession is, please? A. I am a psychophysiol- ogist and neurophysiologist.

Q. Would you explain, please, what a psychophysiol- ogist and a neurophysiologist are? A. Both terms refer to field of bio-medical and psycholog- ical research in which the action of the brain and the rest of the nervous system is studied, particularly in relationship to behavior or disease and disorder.

Q. What is your present position or title? A. I am Chairman of the Department of Psychophysiol- ogy and Neurophysiology, at Fels Research Institute in Yellow [171] Springs.

* * *

[178] Q. Based on your examination of that in- strument, could you characterize it in terms of what it does? A. It is an instrument which will measure the electrical resistance, whether the electrical re- sistance be that of an inanimate body, like a carbon resister, or the resistance between two points on the skin.

* * *

[182] Q. And what would it measure if so set up?

A. Basically it would measure the electrical resistance between the can, skin connections. If I held them in these two hands, the instrument would measure the resistance between these two electrodes.

Q. I don't believe I heard, Dr. Lacey. Would you describe the kind of resistance that would be measured in that situation? A. I don't understand that you meant kind of resistance. It would measure electrical resistance. In this case it would measure the electrical resistance of the skin.

* * *

[184] MR. DODELL: Would you read the last question I had asked, please?

THE REPORTER: Based on your experience with such skin resistance measuring devices, would you tell us what your judgment is of this device that is before you as a skin resistance measuring device, again, assuming that it would be used as I had indicated with the two cans attached to the wire?

THE WITNESS: My own point is that as an instrument for bio-medical investigation, it is rather a poor one.

* * *

[186] May I start by saying that skin resistance is measured not for electrical purposes, but for bio-medical reasons. And I —

THE COURT: What do you mean by that, Doctor? Explain that to the jury.

THE WITNESS: It is commonly used in research, and sometimes in medical investigations of particular kinds of patients. It is used to measure electrical properties of the skin.

In my mind, this is not a good bio-medical device. It fails to meet commonly accepted criteria by which such an instrument would be judged. For example, the skin resistance is measured in ohms, which is the common electrical unit of measure. Of electrical resistance.

The skin resistance as measured in ohms, is a function [187] of what we call current density. That

is to say, the amount of current to be passed through the skin per unit area of the skin. One would normally talk of a current density of 25 microamperes per square centimeter of skin. Which means there are 25 millionths of an ampere being passed through the skin per square centimeter of skin. This is the common unit of measure.

It is commonly accepted, most investigators in the field measuring skin resistance would insist that the current density be maintained constant regardless of the apparent value of the skin resistance.

This instrument seems to have no devices to control the constancy of current. It looks as though the current can vary ten-fold, say, from ten microamperes, and I don't know how to evaluate the area of skin here, to a hundred microamperes. And this would be far too much of a variance to enable quantitative measurements of the apparent skin resistance.

Secondly, the nature of the electro contact with the skin is considered to be of major importance in the skin resistance work. For one thing, the area of the skin that is in contact with the conducting electrode — which in this case is this can — is commonly controlled and limited to a specific area, and its location is commonly controlled so that, [188] depending upon the purpose of the investigation, one might want the electrode to be in contact with an area of the skin which has a lot of sweat glands. And for other purposes, one might want to be in contact with an area of the skin which has a very small number of sweat glands under the electrode.

Holding a can in the hand in this way obviously permits great variation in what areas of the skin are in contact with the metal electrode, and would allow great variation in the number of actively sweaty tissue that is in contact with it.

It is very deficient in another respect, in that it is certainly a commonly accepted criterium for the effective measurement of skin resistance, that an artifact known as electropolarization be avoided. Shall I explain that?

Q. Yes, would you, Doctor? A. Whenever any electricity conducting jelly or substance, ranging from sweat on the surface of the skin to the sort of electrode pass, that your heart doctor puts on your arms and legs when he is taking an electrocardiogram. Whenever any conducting electrolyte, any conducting jelly, is put in contact with a metal electrode and that in turn is put in contact with live skin, small batteries essentially are formed, small sources of voltage are formed. These sources [189] of voltage or potential, can constitute errors in measurement of resistance which is what one wants to measure unless one is specifically setting out to measure skin voltage or skin potential, in which case a different kind of instrument should be used.

An electrode arrangement, such as this, in which the palm of the hand is grasped, a — an electrode such as this will be subject to polarization.

* * *

[191] Q. If the machine were set up as I had indicated before, and somebody — the person who was holding the cans — would squeeze the cans, would that generally cause a reflection on the instrument?

A. Yes, indeed. The amount of apparent skin resistance, remember, is the function of the intimacy of contact between the electrode or skin. * * *

* * *

THE WITNESS: * * * Well, if the subject or patient squeezes the can, he is making more contact with the can and the apparent skin resistance will drop. If he holds the can more loosely, the apparent skin resistance will increase.

[192] So that you have here a situation in which you are not reading skin resistance, but you are reading, partially, a function of how firmly the individual is grasping the can.

* * *

[193] Q. Aside from the use of the cans as the electrodes, would you find the machine in terms of your experience, in using devices for measuring skin resistance, a satisfactory instrument for measuring

skin resistance? A. No, I wouldn't. As I pointed out before. I think I did. The current density is not maintained constant. Even for [194] constant pressure of holding the cans. The instrument is responsive, particularly in the lower ranges where the current densities are located — is responsive. I had better back up here — may be responsive.

So much to skin potential that a very serious error of measurement would be made. I did not have the appropriate equipment to assure myself of this later point. I did assure myself by direct measurement that the instrument does respond to input potential and though properly designed skin resistance meter should do so.

Additionally, it is not a quantitative instrument. That is to say, recovering from this swing of the meter needle exactly how many ohms of skin resistance are represented, would be an almost impossible feat.

* * *

[196] Q. What in turn produces these three conditions that you mentioned? The activity of the sweat gland before a person sweats and the changes in the upper layers of the skin, and sweat?

* * *

A. A wide variety of stimuli will produce skin resistance responses. A large part, as I say, of skin resistance responses are attributable to activity of the sweat glands.

Sweat glands are responsive to the thermal requirements [197] of the organism. If you are in a hot environment, in order to maintain your body temperature constant, your body automatically engages in a variety of maneuvers, and one of them is the excretion of sweat onto the surface of the skin.

This sweat, in the course of evaporating, takes heat away from the body. This is one of our fundamental mechanisms for maintaining our temperature fairly constant.

So anything that provokes sweating in response to thermal or heat requirements of the situation will produce skin resistance changes.

Beyond that, any stimulus, a noise in the room, a flashing light, a sudden pain in the tooth, a sudden increase in muscular tension, if you shove your foot down on the floor, a random thought, mental effort, emotional reactions, the sound of a baby's crying for a mother, a wide variety of stimuli will produce a skin resistance change, just as it will produce a change in the activity of almost any autonomically innervated organ.

* * *

[226] Q. Dr. Lacey, directing your attention again to the instrument that you examined, and assuming that it was set up as I indicated before with a person holding the cans. If a question were asked to that person and the machine registered a response, in your judgment could any meaningful conclusion be given, be drawn from that reading?

* * *

[228] THE WITNESS: If a very large skin resistance response were given when a stimulus was administered or question was asked, one could judge that a variety of things might have happened. I emphasize "a variety of things" and the word "might" have happened. That skin resistance response could have occurred because the person was uncertain of the question being asked, was uncertain of response to give. This has been demonstrated to produce large skin resistance responses. The large skin resistance response may have occurred because the question was personally embarrassing for a variety of reasons so that the person was reluctant under those circumstances existing at that time to answer the question.

The large response might have occurred because at the same time that the question was asked something in the immediate [229] surroundings caught the person's eye. The response might have occurred because at or about the time the question was asked there was a loud noise outside the room. The large response might have occurred because the person

was impatient or irritated or angry by the tone of voice in which the question was asked. In other words, one can only assume given a large skin resistance response that one of the many varieties of occasions and stimuli which cause skin resistance responses had occurred at that time.

* * *

Q. Do you have an opinion, doctor, as to whether a device such as that before you could be of any use in the diagnosis, treatment, or cure of any mental or physical ailment?

* * *

[230] Q. Dr. Lacey, would you consider the question as if the word Hubbard E-Meter were used instead of the word device?

* * *

[232] THE WITNESS: The reason I wanted to separate this device from what I would consider an effective skin resistance device is for an effective skin resistance device the answer to that question is to a small degree, yes. The good skin resistance devices have been used as a research tool and only very occasionally as a clinical tool to try to discover areas of emotional conflict within an individual who is characterized by a neurotic ailment, if that is the correct word to use here. Typically one might administer a word association test or engage the patient in a conversation, and one would assume if upon repeated inquiry about [233] given potential conflict area in the patient one got a large skin resistance response or a variety of other responses, that perhaps this area represented an area of conflict for the patient and therefor it was justifiable to engage in more prolonged inquiry into, for example, one's relationship with one's husband, or child, or mother. In a very small sense instruments such as this, good instruments typically have been used in the study of psychotherapy, either of psychoanalysis or of other forms of psychotherapy in which an attempt has been made to measure by this instrument the impact of emotional discussions on the patient as therapy goes

on. The hope was this would provide an objective in measurement of the course of psycho-therapy. This is a very controversial field and I am quite sure that each expert called to the stand would have his own view of whether the result of such research were encouraging or discouraging.

I think, however, it would be very fair and truthful to say this activity is limited to a very, very few research centers in the field of psychiatry and psychology. So far as helping in therapy, no, except in the sense that I told you as an objective instrument for gauging the progress of therapy. The application of electrodes in the recording of skin resistance has no therapeutic effect. Beyond that there are limited number of [234] skin diseases in which the use of effective instrument might be indicated on research basis. You are, after all, measuring skin resistance and so for example, there are few people who were born without sweat glands and the measurement of skin resistance has been used on occasion to verify the fact that a microscopic search of the skin surface has revealed no active sweat glands.

Skin resistance readings have been used in neurology and surgery to verify specific nerves have been cut in surgical procedures and this too is very, very limited application. But there, as I say, specific neurological and dermatological skin conditions in which skin resistance measurements are used. It is not an important medical tool.

In the study of heat registry, this instrument, or instruments like it I should say, were used quite extensively when it was determined the prime determinant of skin resistance was changed by sweating. Today, for measuring amount of sweat secreted in localized skin and in studies of heat in miners or military personnel in the Arctic region, one would use this new type of instrument. Its main use as a research clinical tool today is in the field of this preliminary kind of diagnosis I was talking about in diagnosing the area of conflict, but I repeat, [235] it is not a widely used tool.

* * *

CROSS EXAMINATION

BY MR. MADDEN:

* * *

[236] Q. * * * And you have got a device that gauges skin response that you have designed yourself, do you not? A. No, sir — that I helped in designing.

* * *

[237] Q. Do you have any financial interest in the future of this device? A. None whatsoever, nor does Mr. Hoofen, I might add.

* * *

[238] Q. Is your device patented, doctor? A. No, sir, it is not. It was developed by us because no [239] commercially available instrument satisfied my specifications for appropriate measurement and when it was developed was made freely available to the scientific community. The Yellow Springs Instrument Company sells it at a modest sum and any profit adheres to them.

* * *

[242] Q. *** Are you prepared to testify, doctor, that if a person is using that machine as you demonstrated this morning, and has a random thought, mental effort, emotional reaction, those things could not stimulate a reaction from that machine? A. Yes, I am prepared to testify to that effect, but in a small proportion of people there will be absolutely no response. In most people by and large on the average there will be a response to all of those efforts. Did that answer you?

Q. From that meter? A. Yes.

Q. A small proportion of people, doctor, would be no response? A. Even in the best of skin resistance meters would be no response.

Q. Even in yours, a small proportion of people would not respond? [243] A. That is right. If the implication is that I consider mine the best, sir, I do not.

[273] GEORGE FRANKLIN MONTGOMERY

[274] witness called for examination by the United States Attorney in behalf of the Government, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DODELL:

* * *

Q. What is your present occupation, Mr. Montgomery? A. I am an electronic engineer.

My present title is Chief of the Measurement Engineering Division of the National Bureau of Standards, which is an agency of the U. S. Department of Commerce.

* * *

[276] Q. I show you Government Exhibit 77. Is that the instrument Mr. Kennedy brought to you for examination? A. I believe it is.

Q. Did you perform tests on that instrument? A. Yes.

Q. Could you explain, please, to the ladies and gentlemen [277] of the jury what that instrument is and how it operates from the viewpoint of the electronics engineer? A. Yes, I can. The instrument used, appears to be designed to measure changes in resistance of any electrical conductor, any body which conducts electricity. When that electrical conductor is connected between these two clips which are electrical terminals. The wires leading from the clips being plugged into the input jack in the instrument. The instrument does this by sensing small changes in the electrical current, passing from one clip to another and through the conductor that is connected to the clips. By amplifying those small changes in current, amplified changes in current to cause a change in the position of this pointer on the meter scale. That is a general explanation of the way it works.

* * *

[278] "Q. Now, would you consider this particular instrument useful in a scientific laboratory for measuring the changes in resistance that you have explained that it measures?

"A. No, I do not."

BY MR. DODELL:

Q. And, could you tell us why? A. The instrument is not calibrated in terms of the electrical units of resistance.

THE COURT: What was the term you used? Calibrated?

THE WITNESS: Calibrated.

THE COURT: Explain that to the jury. Maybe they [279] understand what you mean, but I'd like you to explain it in lay terms.

THE WITNESS: In making electrical measurements of resistance, the resistance is measured in terms of the unit of the ohm. A scientific instrument used for making electrical measurements of resistance has an indicating meter of the scale you see on the front of the instrument.

* * *

A regular resistance meter will have its scale calibrated in units of ohms with zero ohms at one end of the scale, perhaps one hundred, one thousand, 10 thousand, one hundred thousand ohms at the opposite end of the scale. So that the resistance of an external electrical circuit will be indicated directly by the position of the pointer corresponding to the particular resistance on the scale. This meter, this instrument would not be useful for making such measurements because its scale contains no such calibration.

* * *

BY MR. DODELL:

Q. Are there any other points of difference between this and the type of meter, or the type of instrument that you referred to that would be calibrated in

its effectiveness in measuring changes or reflecting changes in resistance? [280] A. An electrical instrument of the type used to make resistance measurements usually has a more convenient arrangement of controls on its front panel than this instrument has.

Q. Well, could you explain the system of controls here first, Mr. Montgomery? A. Yes. This instrument has three controls on the front. Here, here and here. (indicates) All of which to some extent control the position of the pointer on the scale when the instrument is operating. To some extent the controls are ambiguous. That is to say one control is apparently intended as a sensitivity control, that is, this lower one. The one in the lower left-hand corner. Another control, the larger one, is apparently intended as a balance control, intended merely to position the pointer on the scale initially before a measurement is made. There is still a third control which has in effect some of the same functions as either of the first two. The usual electrical engineering instrument for measuring resistance has only two controls, one for setting the pointer of the scale initially to a zero, or calibrated position. In general, an instrument used to make electrical engineering measurements is designed so that those two controls do not interact. This instrument is not so designed.

* * *

[284] Q. From the point of view of the electronic engineer, Mr. Montgomery, are there any essential differences between the Hubbard Mark IV Electrometer and the Hubbard Mark V Electrometer? A. There are small differences in the circuit diagram but I don't believe that they are essential differences.

Q. Do those differences in any affect the characteristics that you described before, regarding the Hubbard [284-A] Mark IV Electrometer? A. No, they do not.

* * *

[286]

CROSS EXAMINATION

BY MR. MADDEN:

Q. Mr. Montgomery, is it not true that this E-Meter that you have inspected and actually worked, will to some degree measure skin resistance? A. Indicates changes in skin resistance, I would not say measure.

Q. Will indicate? A. Yes.

Q. Is it not also true that the devices that you looked at, both the Mark IV and Mark V Hubbard Electrometer are from the point of view of craftsmanship, well made and use components of apparent quality that is customarily in consumer and industrial electronic equipment? [287] A. Yes, that is true.

* * *

ROBERT J. KENNEDY

was called as a witness for and on behalf of the Government, and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

* * *

THE COURT: Excuse me, what is your occupation?

THE WITNESS: I am a Physicist with the U.S. Food and Drug Administration.

* * *

[290] Q. I show you Government Exhibit 7 marked for Identification, a booklet called "E-Meter Essentials, 1961", by L. Ron Hubbard. Did you refer to that publication as part of the literature you referred to and explained in examining this instrument? A. Yes, this is one of the booklets that I did review.

Q. Did you bring with you, Mr. Kennedy, the publications or literature you did refer to? A. Yes, I have a copy of this booklet.

Q. And do you have any other publication that you used in the course of your examination? A. I also have a blue booklet entitled, "Hubbard Electrometer," by John Sanborn, and a copy of what appears to be a patent application of the device — of this or a similar device.

Q. Did you use that patent application also in examining the device? A. Yes, I did.

* * *

[296] Q. Could you explain the results of your examination of the instrument? A. After examining these two booklets on how the instrument functions. we varied the in-put resistance across the electrodes that plug into the side of the meter. Initially we attempted to center the machine as they instruct in the directions and in the patent and when the machine has been centered, varied the in-put resistance to what is the range of the tone arm, and we find it does agree with what is stated in the literature, with a range of 500,000 ohms. We then attempted to determine what is the range [297] of the sensitivity as they have here on the sensitivity knob, and we find that with the setting of 1, the fullscale deflection was produced with about 5300 ohms and when you turned the sensitivity up to the setting of 8, there is a variation of about 700 ohms to produce fullscale sensitivity. This again is with some agreement with what they stated in the patent.

We also essentially played around with it in showing how the squeezing of the cans and variations of the contacts between the hands and the cans would give you a variation in the movement of the meter needle, and we did measure only recently the amount of current which actually passes through the patient when he is connected to the electrodes. We put dummy loads across the terminals which would be equivalent to range of resistance expected in the body and measured the current through this load and this varies from 10 to —

MR. MADDEN: Again, I'd like to have the word "patient" stricken from the answer — "amount of cur-

rent passes through the patient"— has nothing to do with this case.

MR. DODELL: I have no objection in terms of the testimony of this witness to using some other word than patient in the answer, but I object to the statement that it has nothing to do with this case, or at least I don't accept that.

[298] THE COURT: Well, that is a question for the jury to decide at the proper time. Can you use some other word?

THE WITNESS: I did correct it to state through the body rather than patient.

* * *

Q. Was there any other reference in the literature that you examined to the operation of the instrument that you tried to apply? A. The centering part of the instrument which is used with the trim knob. In some of the devices which we examined it was impossible to get a center on the meter according to their instructions, that the position of this knob is dependent upon the position of the tone arm and sensitivity knobs and if you did find a center it would only hold for this one very specific setting of this combination.

In the other, when there is a load across the terminals, the tone arm position would change from that which is recommended for setting and centering and you would immediately lose the center balance of the instrument.

* * *

[299] Q. Now, based on your examination of the E-Meter, would you say that it is a good instrument for measuring changes in resistance from a scientific point of view? A. Not for measuring, it does indicate a relative change of resistance, but would not be an accurate measurement.

Q. Why do you say that, Mr. Kennedy? A. Well, first, it lacks any calibration. The batteries — there is no standard of battery voltage used here. You have no fixed voltage. As long as the battery voltage is above range marked on the dial this is adequate to operate the circuit, but would not give you a fixed

voltage, or give you an absolute or accurate measurement of resistance. You could calibrate or attempt to calibrate the scale but this would take a multiplicity of current since each of these dials is interdependent. It would be almost [300] impossible to get complete calibration to provide accurate rate of resistance.

Q. When you say each control is interdependent, what does that mean? A. The setting, each control, the trim sensitivity and range or tone arm, each effect the position of the meter needle.

Q. Is it customary in scientific measuring instruments that there would be an interdependence such as you described? A. No, I don't believe it is.

* * *

[310] MR. DODELL: May it please the Court, a deposition has been taken of a person who was at the time of the taking of the deposition an officer of one of the claimant's, the Founding Church of Scientology, and the Government would ask permission, ask leave of the Court to use that deposition at this time, reading portions of it into evidence.

THE COURT: All right. Subject to any objections that might be made.

* * *

[At the Bench]

[311] THE COURT: Pre-trial deposition. Now, what is your contention?

MR. MADDEN: My point, Your Honor, is that this is 3 volumes of deposition, where the essence of it is the Government attorney reading from these documents that aren't [312] yet in evidence and saying what do you say about that?

* * *

MR. HANNON: We think it is appropriate to put it on at this point. Mr. Madden can make his objections. What we propose is we would put Mrs. Sisk on the stand to read the answers of the witness, deponent. I will read the question and she will read the answer. If he has any objection to the question he can make it at the time.

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MR. MADDEN: Your Honor, this is the case right here. They are going to use a great deal of it I assume. I have no idea. So, I guess I must now know what you are going to proffer. I must look at it and see what under the rules you also have to add in your case to make it relevant because the rules clearly state you can't just take a couple of sentences [313] and I have a right to say what is relevant and I must object to it and get a ruling on it.

* * *

THE COURT: Suppose you hear it from the stand. Miss Sisk will take the part of the witness. Then you can object.

* * *

THE COURT: Let's proceed.

(In Open Court:)

[314] THE COURT: All right.

MR. HANNON: May I explain, if Your Honor please, to the Jury?

THE COURT: Well, you can explain or I can. What they are going to do now, what the Government Counsel is about to do is this: On September 10, September 11, and September 15, 1964, Depositions of a witness were taken. That means that this witness appeared before a Notary Public somewhere in the city I assume and gave testimony under oath. Now, the Government in order that you will be able to follow this testimony better is going to call to the stand an associate attorney, Mrs. Sisk, who will take the part of the witness, who was put under oath and gave certain testimony, and the questions will be propounded to Mrs. Sisk and you will try to picture this witness on the stand even though you haven't seen the witness. All right. Let's proceed.

Call Mrs. Sisk.
Whereupon,

MRS. JOANNE SISK

taking the part of the witness,

MISS MARILYNN E. ROUTSONG

read the testimony as follows:

DIRECT EXAMINATION

[315] BY MR. HANNON:

Q *** (reading) "Miss Routsong, would you tell us your name and spell both your first name and your last name, please.

Q. "Yes. My name is Marilynn Routsong. That is M-a-r-i-l-y-n-n- R-o-u-t-s-o-n-g.

Q. "You have no middle initial?

A. "Yes. "E."

* * *

[321] (reading)

Q. "Now, Miss Routsong, when you were in California, was your title Executive Secretary?

Q. "That is right. My title was H. C. O. Executive Secretary. That stands for Hubbard Communication Office.

Q. "Now, as Executive Secretary to Dr. Hubbard?

A. "Yes.

Q. "Who is in England?

A. "Yes.

Q. "Besides being Dr. Hubbard's Secretary, would you tell me in more detail what your responsibilities were as Executive Secretary?

A. "Dr. Hubbard has lines to and from an office in England, as large as the one here, because a good deal of communication and —

Q. "By telephone?

A. "No, by bulletins and so forth, and directives and so forth, to the various organizations.

Q. "How do you receive them?

A. "By mail. We also have a Telex Machine, through which [322] we can send cables or Telex. Sometimes it is by means of that; generally, by mail.

Q. "All right.

A. "And a good deal of this material needs to be duplicated at the point received — for instance, in California — in the form of bulletins. It would go

out to the entire staff or sometimes just portions of the staff, and the office there, for one of its functions duplicates this material and sees that it goes to the various staff members. Sometimes, it is sent out to various Scientologists in the field of California.

Q. "Did you use the term Ridge or Rick?"

A. "What?"

Q. "Ridge or Rick? You did not use that term?"

A. "No."

Q. "All right. Go ahead."

MR. MADDEN: Your Honor, at this point, we are getting into religious matters of the policies of the church. I don't see they are relevant, and also I have the other standing objection.

THE COURT: Well, I think I will overrule your objection at this time. Proceed.

[322] THE WITNESS: (reading) "Another function of the office is that there are many policy letters which carry policies of the church, and another function of the office is to check upon, and see that these policies are enforced and carried out.

"Another function of the H.C.O. is what we call hat checking.

THE COURT: Excuse me. What does H.C.O. stand for? Does anybody know?

MRS. SISK: (from the witness stand) Hubbard Communication Office.

THE COURT: All right.

MRS. SISK: (reading) "That is, a hat is a delineation of duties and so forth, of the various positions in the organization."

BY MR. HANNON:

(reading)

Q. "What do you do with this hat?"

A. "In order to help the various poeple, to carry out their jobs, they are called in now and then and checked; the duties and policies are related to their position.

* * *

[325] MR. MADDEN: Your Honor, I want to renew the same objection.

* * *

(At the Bench)

THE COURT: State your objection again for the record.

MR. MADDEN: May it please the Court, my objection is that counsel is going through a lot of religious matter. He is going to go through a lot of precessing matter, and the relevance is — it is irrelevant according to our position, and I think the only feasible way to go about it is see what counsel intended to offer. Let me look at it and let me see what goes to that question, and then let us discuss it with the Court and then we go on with reading this depositions.

THE COURT: Wait a minute. What is the theory of the Government insofar as this church affair is concerned? What do you contend as to the relevancy of this particular [326] part?

MR. HANNON: Well, it is the founding church of Scientology, and its auditors, Your Honor, that make use of this device or instrument. And they purportedly use it in connection with their religious exercises. We contend that it was mis-branded in saying that it is good for the diagnosis, treatment, and cure of mental and physical ills and in order to get a proper understanding of the organization that is using it and the use they make of it, the deposition of this officer of the church, and she was an officer, the treasurer of the church, was taken.

* * *

THE COURT: I don't think you can just break this up [327] and take things out of context and get the true meaning.***

* * *

THE COURT: I think it will save time to go ahead and read the whole deposition.

* * *

[329] Q. "Have you attended college, Miss Routsong?

A. "Yes, I have."

THE COURT: According to the record here, there is an objection by Mr. Brinkman, who was present. You want to press this objection at this time?

MR. MADDEN: Your Honor, I intended when I first made the objection on the basis of the First Amendment, to have a continuing objection.

THE COURT: Well, you have a continuing one, and to this question on this deposition. All right. Let's proceed.

* * *

[343] Q. "Did you subsequently become an officer of the Founding Church of Scientology?"

A. "Yes, I did.

Q. "And are you an officer at the present time?"

A. "Yes, I am.

Q. "And what office do you hold?"

A. "I am Trustee and Treasurer.

* * *

[361] Q. What office do you hold in the Distribution Center, Inc.?

A. "Treasurer.

Q. "And in addition, are you on the Board of Directors?"

A. "Yes.

* * *

[373] Q. Miss Routsong, I am going to show you a publication captioned, E-Meter Essentials, 1961, by L. Ron Hubbard, * * * and I will ask you, can you identify that publication?

A. "Yes."

* * *

[374] Q. "Would you tell us please, what it is?"

A. "It is a manual on the essentials in the use of the E-Meter. Essentially, it is a manual comparable to a priest's manual on how to take a confessional.

Q. "Is it a publication of the Founding Church of Scientology of the District of Columbia?"

A.. "This was a publication for the Hubbard Communications Office in England.

Q. "Yes, but is it adopted and used by the Founding Church of Scientology in the District of Columbia?"

A. "Yes, that is right.

Q. "And so it is an official document of the Founding Church of Scientology?"

MR. MADDEN: Your Honor, need I renew these —
THE COURT: They will be renewed.

* * *

[375] Q. Miss Routsong, I show you a publication bearing the title, The Hubbard Electrometer, by John Sanborn, and I ask you whether you can identify that, please?

A. "Yes.

Q. "Is that a publication that is followed by the Founding Church of Scientology here in the District of Columbia?

A. "No.

Q. "Are the contents of Government Exhibit 2, which I have shown you, taught and adhered to in the Founding Church of Scientology here in the District of Columbia?

[376] A. "This book is now and has been for some time, out of print, and it has never been as such — this book — a manual that has been taught strictly from, in the church.

The Data in the book — I have not read the book — strictly as such, it is a book that has been in the past for sale by the Distribution Center, to the field of Scientology.

Q. "The Distribution Center here in the District of Columbia?

A. "Yes.

Q. It has been distributed and sold by the Distribution Center?

A. "That is right.

Q. "In connection with the churches of the Scientological movement?

A. "Yes.

"MR. HANNON: Thank you.

Q. "I show you, Miss Routsong, Government Exhibit No. 3, which is captioned, 'Scientology - A History of Man', and it was written by L. Ron Hubbard, and I ask you to examine that and tell me whether you can identify that.

A. "Yes."

MR. HANNON: If Your Honor please, this bears Government Exhibit No. 10 in this trial.

Q. "Now, is that an official publication of the Scientology and Dianetic program?

"MR. HANNON: I rephrase my question, Your Honor.

Q. "Is that a publication that is (1) distributed by the Distribution Center, Inc., here in the District of Columbia in connection with the Founding Church of Scientology in the District of Columbia?

A. "It is a book that is distributed by the Distribution Center, Inc., to Scientologists.

Q. "Yes, and this is followed by the Founding Church of Scientology in the District of Columbia?

A. "This book?

Q. "Yes.

A. "Not at this time.

Q. "The contents?

A. "No.

Q. "Was it at one time followed?

A. "No. This book was printed actually back in 1952, is its first printing. It has data and understanding of [378] things in Scientology in it which people read, but the data in it is not currently in use.

Q. "But it had been in use?

A. "In the past.

Q. "In connection with Scientology?

A. "Yes.

Q. "Now, then, I was going to ask Miss Routsong, isn't Government Exhibit No.3 still being distributed by the Founding Church of Scientology here in the District of Columbia?

A. "The Distribution Center.

Q. "The Distribution Center here in the District of Columbia still distributes upon request, Government Exhibit No. 3, does it not?

A. "As I recall, yes.

Q. "It does?

A. "Yes.

* * *

[379] A. "The Distribution Center is a separate corporation. However, that corporation is owned by the Founding Church of Scientology.

Q. "And its purpose?

A. "I beg your pardon?

Q. "And the purpose of the Distribution Center, Inc.?

A. "Is to publish.

Q. "Is to further the teachings of the Founding Church of Scientology?

A. "No. It is to publish and disseminate the publication of Scientology.

Q. "The publications of Scientology?

A. "Yes.

* * *

[383] Q. "Miss Routsong, I show you *** 'Scientology; The Evolution of a Science,' by L. Ron Hubbard. I will ask you whether or not you can identify that?

A. "Yes, sir.

Q. "Now, is that a publication that is distributed by the Distribution Center, Inc., in the District of Columbia?

A. "Yes.

Q. "And is it used in connection with the teachings of the Founding Church of Scientology here in the District of Columbia?

A. "Yes.

* * *

[384] A. "— and I will ask you whether you can identify that publication? [Dianetics, the Evolution of a Science"]

A. "Yes.

Q. "Is that distributed by the Distribution Center, Inc., here in the District of Columbia in connection with the Scientological movement?

A. "Yes.

Q. "Is it used in connection with the purposes of the Founding Church of Scientology here in the District of Columbia?

A. "Yes.

* * *

[385] Q. Is Government Exhibit No. 6 [Government Exhibit 11 at the trial] published and distributed by the Distribution Center, Inc., here in the District of Columbia?

A. "It was.

Q. "It was. at what time, do you recall?

A. "I don't know. It is not dated.

Q. "And was it distributed in connection with the Scientological movement? A. Yes.

A. "Yes.

Q. "And to what extent used in connection with the Founding Church of Scientology here in the District of Columbia?

A. "Yes.

Q. "Now, the publications as listed thereon, are they also distributed by the Distribution Center, Inc., here in the District of Columbia?

A. "What was the question?

Q. "Are those publications that are listed on Government Exhibit No. 6, distributed by the Distribution Center, Inc., in the District of Columbia?

A. "Yes.

[386] Q. "And are they used in connection with the Scientological movement?

A. "Yes.

Q. "And to that extent also by the Founding Church of Scientology here in the District of Columbia?

A. "Yes.

"MR. HANNON: Thank you. I would like to have this marked as Government Exhibit No. 7."

MR. HANNON: Your Honor, this one bears Government Exhibit No. 12 in this trial.

Q. "Government Exhibit No. 7 bears the caption, 'Scientology Books, 1961.' I will ask you if you will examine that document, please. Can you identify Government Exhibit No. 7 for me, Miss Routsong?

A. "Yes.

Q. "Is it distributed by the Distribution Center, Inc., here in the District of Columbia?

A. "It was.

Q. "Was it distributed in connection with the Scientological movement?

A. "Yes.

[387] Q. "And to that extent, the Founding Church of Scientology?

A. "Yes.

Q. "Now, the publications listed in there, were they also available for distribution by the Distribution Center, Inc., in the District of Columbia?

A. "Yes.

Q. "In connection with the Scientological movement?

A. "Yes.

Q. "And the teachings of the Church of Scientology — the Founding Church of Scientology in the District of Columbia?

A. "Yes.

* * *

[388] "AFTERNOON SESSION

Q. "Miss Routsong, I am going to show you what I have marked for identification, and I will ask your counsel if he will agree that it is proper for me to mark them under the circumstances. I am going to show you what I have [389] marked as Government Exhibit Nos. 9A through and including 9Z, Government Exhibits 9AA through and including 9AZ; 9BA through and including 9BZ; 9CA through and including 9CZ; and 9DA through and including 9DO, and I will ask you if you can examine these documents and tell us, please, whether you are able to identify them? them?"

* * *

[390] Q. "Do you recognize them, Miss Routsong?

A. "Yes.

Q. "Can you identify them?

A. "Yes.

Q. "What are they, please?

A. "It is an 'Ability' magazine, which is a Scientology publication.

Q. "A Scientological publication?

A. "Scientological publication.

Q. "Yes.

A. "Which goes back through the years that Scientology has evolved in. I would want to say this about these magazine copies as well as similar various other publications I have looked at here, that they are not all used per se at this time.

"Any religion has a period of evolvement, as for instance, like other churches also; at times in the past [391] these churches have prohibited people from dancing, but they no longer do this. Other churches have burned witches if you go further back in history or had various inquisitions, and so forth, and this is no longer the way they practice their religious doctrine.

Q. "Well no —

A. "In Scientology the church has a period of evolution, of development, and what we exercise, or the methodology that we use today, is not exactly what it was in the past.

"Some of these publications are studied in the church more from their historical value than from the exact method of them.

Q. "Are all of these exhibits issues of the 'Ability' magazine?

A. "Yes.

Q. "And it is the Magazine of Dianetics and Scientology, is it not?

A. "That is true.

* * *

[392] Q. "And are those magazines, ['Ability'] utilized in connection with the Scientological movement?

A. "Yes, that is what I was trying to explain, but I would say they are not used at the present time except for historical interest.

Q. "No, but at the time they were published and distributed they were used in connection with the Scientological movement?

A. "They were used at that time —

Q. " — in connection with the Scientology movement and the purposes of the Church — both?

A. "Yes.

Q. "Both the Founding Church of Scientology and the Scientological movement here in the District of Columbia?

A. "They preceded the Founding Church.

[393] Q. "But those that did not precede the Founding Church, they were utilized in connection with the Founding Church of Scientology?

A. "Yes, that is true.

* * *

Q. "Miss Routsong, I will now show you what has been marked as Government Exhibit Nos. 10-a through and including 10-k and I will ask you if you can identify these documents and they are photocopies."

* * *

[394] Q. "Now each of those, Miss Routsong, is a photocopy of the professional auditor's bulletin, is it not?

A. "Yes.

* * *

[395] Q. "Are they utilized in connection with the Scientological movement?

A. "Yes, they are.

* * *

[437] Q. "I will show you *** a document bearing the caption of The Works of L. Ron Hubbard, and ask you if you can identify that?

A. "Yes.

Q. "Now, is that document distributed by the Distribution Center, Inc., here in the District of Columbia?

[438] A. "It is; or one similar is now.

Q. "And the books and documents contained thereon, are they also distributed through the Distribution Center, Inc., here in the District of Columbia?

A. "They are, or were, at the time of the printing of this.

Q. "And were they, when distributed, used in connection with the purposes of the Scientological movement and the purposes of the Founding Church of Scientology, located here in the District of Columbia?

A. "I want to answer that question in two parts.

"They were used in connection with the purposes of the Scientological movement; not all of the books have been used in the purpose of the Founding Church of Scientology itself.

* * *

[439] A. "I wish to clarify my answer on this in saying that these books are all used in the general movement of Scientology and Scientology as a religion, but the ones I will specify are not used within the church and in the training of people itself.

"Sanity for the Layman is not used.

"Summary of Scientology.

"I don't believe Scientology's Contribution to Knowledge is used.

"The Hubbard Electrometer is not used and has not been for some time. It may have been sometime in the past.

"The Advanced Clinical Court Manual is not used now. It was sometime ago.

"Clear Procedure, Issue One is not used now. * * *

* * *

[441] A. "I don't know the answer to that question. There would be varying times for varying pieces of work. They are not being used, in no way indicates that we feel that that work is no longer any good. It is just that the Founding Church draws for the material it teaches from those things which it feels are most pertinent currently, and the other materials are used by Scientologists throughout the country.

Q. "Those that have been used in the past, and you say are not used now, were they used up until 1960?

A. "That is difficult to answer because each piece has different timing. One of them, I see, was only written in 1960.

* * *

[444] Q. "With respect to the material that is no longer used?

A. "I wish to clarify that as not that it is no longer used as part of Scientology as a whole. It is

no longer used in the church, in its training, as there is more pertinent data available.

Q. "All of the data listed in 39 [Exhibit 92 at trial] is used in connection with the Scientological movement?

A. "That is right.

* * *

[445] Q. "Yes. I asked that that data — this material that is listed on Government Exhibit No. 39, which you said had been used in connection with the purposes of the Founding Church of Scientology, but is no longer being used, I asked whether the church had issued publications withdrawing the text of those publications that had been used and are not being used, or repudiating them?

A. "No. That is what I was trying to clear up before. The church does not repudiate that material which it is not using in the training it does there, because, like, the material is still valid. The church did not consider it invalid. The church has — as you can see, there is a great deal of material here to draw from in teaching Scientology and the church uses it. It is impossible to use it all. It uses a certain part but it does not repudiate the rest of its material.

Q. "Did it withdraw the material that is no longer being used, from those people who had obtained it?

[446] A. "No. It does not consider the material as being invalid. It considers it perfectly valid.

Q. "Even though it is no longer being used?

Q. "Even though it is not in current use in the training that the church is doing itself. It does not repudiate its former material. It has improved upon it but the former material is still valid and still in good use. I mean, it is good material.

Q. "Yes.

A. "And the church has not repudiated or denied.

* * *

[456] Q. "Miss Routsong, with respect to the exhibits that we have marked as Government's Exhibits 1 through 45, you have told us that much of this mate-

rial is used in connection with the purposes of the movement of Scientology and the purposes of the Founding Church of Scientology located here in the District of Columbia, with respect to that material, that material has been printed for promoting the purposes of Scientology, has it not?

A. "Yes, I would say that.

Q. "And aside from promoting the purposes of Scientology, it has no other use, does it?

A. "Well, the purposes of Scientology are to, or as laid out in the Articles, and are to help people and they are for those purposes.

Q. "Yes, and so again, they advance the purposes of [457] Scientology and the purposes of the Founding Church of Scientology, do they not?

A. "Yes.

Q. "And other than advancing the purposes of the Founding Church of Scientology, they have no other useful purpose?

A. "I don't quite understand your question.

Q. "Are they intended to promote, encourage, the movement of Scientology — the Scientological movement — and the purposes of the Founding Church of Scientology? Isn't that what they are intended to do?

A. "They are intended to be of tremendous assistance on this planet to the spirit of man. I mean, if that is the purpose, in saying this is the purpose of Scientology and its movement, yes.

* * *

[458-480] Q. "And you had told us that the Distribution Center, Inc., is an independent business corporation, but I believe you said it was owned by the Founding Church of Scientology. Is that correct?

A. "Stock of it is owned by the Founding Church of Scientology.

* * *

[484] Q. "How does one become a Minister in the Church of Scientology?

* * *

[485] A. "The qualifications for ordination in a church are a person must take training to the level of

at least of H.C.A. and the successful completion of that level.

Q. "What is H.C.A.?"

A. "Hubbard Certified Auditor. And thereafter must take an examination on other things pertaining to the ministry.

Q. "There is no requirement that you attend a school or a university of theology, is there?"

A. "No.

Q. "So that the training for ordination as a minister within the Church of Scientology is carried out by the church itself?"

A. "That is right.

Q. "And it consists of what you said, of obtaining the status of H.C.A. through study, then examinations that follow.

A. "Examinations of other things pertaining to the ministry, in addition to the H.C.A. and a person must be of good moral character and have his own ethical code. He must be a ethical and moral person.

Q. Now, are you saying that each minister is entitled to [486] follow his own code of ethics?"

A. "He must have a code of ethics, yes.

Q. "Does the code of ethics that he must have comport with the code of ethics of the Church of Scientology?"

A. "I don't understand the question.

Q. "Is each person who is ordained as a minister in the Church of Scientology free to choose the code of ethics that he wants to follow?"

A. "Each person has his code of ethics.

Q. "Is the code of ethics that they have laid down by the Church of Scientology?"

A. "No.

Q. "So that they are free to follow their own Code of Ethics as they understand they should?"

A. "That is right.

Q. "Would you tell us, Miss Routsong, what the duties and responsibilities of a minister are?"

A. "Essentially the duties of a minister is to minister.

Q. "What does that mean, please?"

A. "It means to help, assist people in the spiritual way, and he must be able to perform the various church services.

[487] Q. "What would they be, please?"

A. "Well, we have a regular Sunday church service and he has to be able to perform that. He has to be able to perform a marriage or a burial, christening, various services of that sort.

Q. "Your ministers here in the District of Columbia are authorized to perform marital ceremonies?"

A. "Yes, they are.

Q. "Am I correct in understanding that each minister is entitled to his own code of ethics, and therefore, the code of ethics of the various ministers would differ one from the other?"

A. "I consider that question is a little confusing, because I would need to go into the whole of Scientology in order to be able to answer it.

Q. "When you say code of ethics, do you mean a code of behavior?"

A. "That would be a moral code; he needs to have a code of ethics by which he can abide and live by.

Q. "But the church does not spell out what this code of ethics must be?"

A. "No. By and large, it is understood to be the ethics contained in the whole works of Scientology but this is not spelled out in a list.

[488] Q. "Are you required to adhere then to the code of ethics spelled out in Scientology or are you free to choose your own code?"

A. "There are codes within Scientology that a person in his training learns and is expected to go by, and these form, as it were, a part of the code of ethics of the Scientologist but we have no thing called the code of ethics of Scientologists. It is in various other

codes. These codes, he is expected to live by. There is the Code of Scientology. There is an Auditor's Code.

Q. "What, Miss Routsong, do the services on Sunday consist of?

"Would you tell me that, please?

A. "No. I have not been to the Sunday services recently. I could not tell you what it is.

Q. "Have you conducted Sunday services?

A. "I myself have not.

* * *

[489] Q. "Does the Church of Scientology define the services that shall be held on Sundays?

A. "It is defined in a broad way. It is on the subject of Scientology, being to assist and spiritually comfort the people who come.

Q. "You cannot tell me what it consists of specifically?

A. "No.

Q. "Generally?

A. "Generally, I told you.

Q. "Is it an exercise relating to the honor and glory of God?

A. "Not specifically. It is on the subject of Scientology. It relates to the subject of the Creator and sometimes it relates to other things. It could be on any facet in life and the spiritual being's relationship to it.

Q. "Now, you told us that you were an instructor in Scientology. Are there various courses in Scientology that one pursues?

A. "Yes, there are.

Q. "Would you delineate or tell us what these courses are?

[490] A. "Well, I delineated part of that yesterday, on the courses that are taught at the Academy.

Q. "What are they?

A. "That was the Hubbard Apprentice Scientologist courses.

Hubbard Qualified Scientologist Course.

The Hubbard Certified Auditors Course.

At times, there is a Hubbard Clearing Auditors Course.

Q. "These all have to do with the teaching of the process of auditing?

A. "They all have to do with that. Yes.

Q. "Besides those courses that you indicated, they teach auditing, do they not?

A. "They teach auditing along with other facets of Scientology.

Q. "Would you tell us please, what auditing means?

"First, let me ask you this:

"Is processing and auditing synonymous there? They are just the same?

A. "Yes.

[491] Q. "Would you tell us what auditing is, then?

A. "I can't tell you what auditing is, except in a very general way.

Q. "Do the best you can for us, if you will, please

A. "Auditing — to audit means to listen. An auditor audits a pre-clear.

Q. "So that we all understand each other, would you now define what a pre-clear is?

A. "A pre-clear is a person undergoing processing for the purpose of becoming a clear, which is a goal in Scientology. It is a spiritual goal in Scientology.

Q. "What is the difference between a clear and a pre-clear?

"A pre-clear is not yet clear. It is pre-clear. Before clear.

Q. "When you process or audit them, what is it that you clear them of?

A. "I cannot answer that without going into a good deal of Scientology, as a subject, and as a religious subject.

Q. "Go ahead, please. You can go into it."

"Do you understand my last question, Miss Rout-song?

A. "I would like to have the question read."

* * *

[492] Q. "You said, as I understand it, as I recall, that in processing — in the process of auditing a person is cleared. You said that the difference between a pre-clear and a clear was that a clear had been cleared, where a pre-clear had not. I am asking for you to tell me what a person is cleared of when he goes through the auditing process.

A. "He is cleared of the reactive bank.

Q. "You have to define reactive bank for us.

A. "In Scientology, we believe that the spirit is essentially a free being, and through various confusions, and things that he has done, that has happened with him, he is confused through existence, and this creates machinery and metal machinery, as I would say — mental — we believe that mental is a product of the spirit, and as such, this comprises what we call the reactive bank. The reactive bank then acts back against the spirit, and leaves him in a saddened state, as it were. We, in processing, endeavor or have the goal of getting him to clear up his confusions about existence and his past, to the point where he no longer has them.

[493] Q. "Is the reactive bank the store house of human experiences that the person has encountered during his life?

A. "I think, to put that in a little different way, it is not conceived that it is a storehouse; and that it is not conceived that it is stored any place; but that it is a product of the creation, although automatic, of the spirit and this is the accumulation of his past experiences, through various lives, not just one life — through all of his existence in time.

Q. "He, as a spirit, could have occupied more than the body that he immediately occupies. Is that what you are saying?

A. "That is right.

Q. "He could have occupied bodies of individuals at earlier times?

A. "Yes, he could have had previous bodies, and have lived previous lives?

Q. "Including an animal?

A. "Not necessarily animal. Generally, human.

Q. "Now, these experiences that he has had, either in the body he now occupies or in other bodies of the past, are retained, are they not, according to Scientology, in the [494] reactive bank?

A. "It is called the reactive bank. However, it is not conceived that they are retained all of the time in a bank, the idea of a punch card system; by the way I do want to say we do not believe this has anything to do with the brain, or that these experiences are stored in the brain or anything like that. We believe that these experiences are — that some of them are kept either known or unknown, created in the spaces around the spirit, and that some of them are not kept in a constant creation at all but can be called into creation upon what we call re-stimulation. That is, something keys it in and causes the experience to come in to re-stimulation.

Q. "Now, wherever they may be stored — you used the term store — in the auditing process, Scientologists contend that through the auditing process, the person is capable of recalling these past experiences.

"Is that not so?

A. "Yes.

* * *

[497] Q. "Isn't that a Hubbard Mark Four Electrometer?

A. "That is what I said.

Q. "Isn't it a device used in processing in Scientology?

A. "It is a tool, an instrument used in processing in Scientology.

Q. "All right. If you want to call it a tool or an instrument, that is acceptable to me.

A. "Yes.

* * *

[499] Q. "Now, when a person is audited, are they required to hold these cans one in each hand, in the fashion I am showing you now?

A. "That is right.

* * *

[500] Q. "Now, when you do use the "E" meter as an auditor, would you tell us how that is done? Assume that I am the pre-clear and you are auditing me, I would hold a can in each hand, such as I am doing now. Is that correct?

A. "That is right.

Q. "And then this cord would be connected to each of the cans?

A. "That is right.

Q. "And then it would be plugged into the "E" meter, such as it is at the present time?

A. "That is right.

Q. "What would happen next? What is the next step that is taken in connection with the use of the "E" meter in processing?

"What would you do as an auditor?

A. "As an auditor, I would audit you.

* * *

[501] A. "I would turn the machine on.

Q. "You turn it on where?

A. "From the "off" switch to the full sensitivity.

Q. "All right. There is a switch under which the word "off" is printed, and you turn that switch to the right and all the way over?

A. "I turn it clockwise. Clockwise.

Q. "Over to the number 16?

A. "16.

Q. "Yes.

A. "I set this. This is called the tone arm.

Q. "The tone arm is the knob. This is at the upper lefthand corner of the "E" meter. Is that correct?

A. "That is right.

Q. "And you turn that to where?

A. "I set it to two. This is in order to calibrate the needle.

Q. "All right. You set the tone arm to No. 2.

A. "Then I turn the switch to set from transit.

First of all, I check to see that the battery is sufficient.

Q. "And that is the switch, over which is printed the words, set, transit and test?

[502] A. "Yes. I set the "test" to see if the battery — the meter is not in proper working order — if the battery is sufficient, the needle swings over to this area, here.

Q. "Over to the red area?

A. "Over to where it says test, and it should be done in this area. This test area.

Q. "All right.

A. "Then I set it to where it says set, and calibrate with what it says trim. I calibrate to bring the needle into that line.

Q. "So you turn the trim knob until such time as the needle comes back in the area where the word "set" is printed on the dial?

A. "To the line in the center.

Q. "Now, after that has been done, what next is done?

A. "I plug in the meter.

Q. "Then do you ask me a series of questions?

A. "Not necessarily right away.

Q. "Does there come a time that you ask me a series of questions?

A. "There comes a time when I am asking you questions, yes.

[503] Q. "And if you asked me a question, and I don't respond truthfully to the question, can you determine from the "E" meter that I have not responded truthfully?

A. "No.

Q. "What is it that you can tell from the "E" meter, from the responses of my questions?

A. "I can tell whether there is a spiritual reaction to it; whether you have an emotional response to the question or not.

Q. "If I do have an emotional response to your question, what happens with respect to the "E" meter? What does it do to reflect that I have an emotion experience — emotional answer?

A. "It reacts — the needle moves in some way.

Q. "Does it move either to the left or the right or is it consistent at all?

A. "There are varying needle reactions, which is largely covered by a change of characteristic of the needle prior to the question. The needle can fall; it could rise; it could do a little dance back and forth. It could go into a bit erratic motion, but it does something different to what it was doing, as a result of the question, and immediately to the end of the question.

[504] Q. When my response causes the needle to react, as you described, so that you understand that I have had a emotional response to the question, what does that indicate to you?

A. "That — in the first place, if I asked you a question, I expect you to give me an answer to the question.

Q. "Yes. I give you an answer, and you told me the needle moved, so you understand that my answer is an emotional response, and I am trying to find out from you now, what does an emotional response mean to you, as an auditor?

A. "It means to me, as an auditor, that as a spirit there is something on the subject to which you are reacting. In other words, the subject is not cleared.

Q. "Have you reached my reactive bank?

A. "No.

Q. "Does the fact that I gave an emotional response to your question reflect a past experience of my life or lives that gives rise to a confused state within me?

A. "It means to me that you have an emotional reaction on it, due to something, but it does not necessarily mean something out of the past life or experience in the past life, necessarily.

[505] Q. "Well, how do you determine, with the use of the "E" meter, these experiences of past life or lives, that give rise to the confused state that you are seeking to clear me of?

A. "It is very difficult to go into this. There is a long course of study to give you sufficient answers to these questions, which is a part of the training of Scientology. I don't use the "E" meter. I get the answers from you — I mean, I don't use the "E" meter

to find a past life necessarily, as an adjunct to me, like, if I am in an emotionally charged area or not, but the answers come from the pre-clear.

Q. "I understand that the machine does not give you any answers. When you are auditing me, you ask me the questions, is that not so, and I give the answers? Is that correct?

A. "That is right.

Q. "But when you ask me the questions, does the machine indicate to you areas in which you are probing, where I have had emotional experiences, that I should now be cleared of? Don't you determine that from the machine from the way the needle behaves?

A. "No, not necessarily. You might have an emotion [506] or response right now, at the present time, that was causing the machine to react. It depends on the line of questioning.

Q. "Yes, so that the needle could react to the present experience that I am having, but the needle might also be reacting to a past experience that I have had. Is that right?

A. "It could be; or it could be something other than a past experience or incidence in time.

Q. "Let me ask this, in a rather simple way, if I can.

Does the "E" meter aid an auditor in uncovering past experiences of the pre-clear which the auditor hopes to clear him of?

A. "Not exactly. It aid the auditor in his line of questioning, in which the pre-clear recovers his past experience. The auditor does not uncover it. The pre-clear does.

Q. "The pre-clear does it himself, yes.

A. "Yes, that is right.

Q. "Yes; but when you are auditing a pre-clear don't you guide the audit by a series of questions that you ask?

A. "In this fashion: If a question is asked, and there [507] is no reaction on the "E" meter, it is either considered that there is no charge upon the subject, or the charge is not available or reachable

for stimulation at the time.

Q. "But if there is a charge on the "E" meter?

A. "If there is a charge upon the "E" meter, it is a gauge used to find that it is an area, whatever it is, that is being covered where the reaction is; that there is something further on it.

Q. "So then doesn't it aid — doesn't it in that respect, aid the auditor in his efforts to uncover or to have the pre-clear disclose past experiences of life?

A. "Well, I will qualify that by saying it aids the auditor in assistance to the pre-clear, in uncovering those experiences.

* * *

And other charged things. It is not all experiences. You might say, incidences in time, that are charged.

* * *

Q. "Isn't it a fact, Miss Routsong, that the "E" meter plays a most significant part in processing or auditing a [508] pre-clear?

A. "The "E" meter is a tool or an assistance in auditing a pre-clear. It is not a total necessity. It just helps.

Q. "Well, has not L. Ron Hubbard said that you cannot clear a person without an "E" meter?

A. "He said that some time ago, and that is possibly still true today.

* * *

[509] Q. "Now, isn't it true that the "E" meter used in Scientology, Miss Routsong, is as this article has indicated, an essential tool for the practice of auditing?

A. "The "E" meter is a tool; by the way, I would like to say here, that, like this is what we call a confessional aid.

Q. "The "E" meter is a confessional aid?

A. "Is a confessional aid.

Q. "The one we marked for example, as Government Exhibit 46, is a confessional aid?

A. "Was used as a confessional aid.

Q. "All right.

A. "And in the confessional it is a very handy tool. I cannot truthfully say that in a lot of proces-

ses, that it could not be done except if you had an "E" meter there but it could certainly be done a lot more easily and thoroughly and to the benefit of the spirit with the tool of an "E" meter to handle with the person on it.

Q. "All right. Let's see if we can understand each other then. May I understand that you have now told me that the "E" meter is an aid in the auditing process?

A. "Yes.

* * *

[510] Q. "But since the E meter has come into being, is it correct that auditors always use the E meter in their efforts to clear a pre-clear?

A. "Yes, in practice, an auditor uses an E meter.

Q. "All right.

A. "It must be referred to, in the sense, like if one wants to make the best use of his skills, he would use an E meter. The aid to the auditor is in the application and use of his skills and in taking a confessional.

* * *

[511] A. "There are processes in the route to clearing which you could not go into without an E-meter.

Q. "I understand the auditor and the pre-clear can sit down and the auditor can ask the pre-clear questions, not using the E meter; I understand you were saying that before the status of clear can be achieved, before you can clear a person, as you use the term, isn't it necessary that he be, that the pre-clear be put on a meter?

A. "At this time, yes.

* * *

[512] A. "There are some processes in the line of doing this in which the E meter would not be totally essential.

Q. "Yes.

A. "But before the final is reached an E meter is essential.

Q. "It is indispensable, is it not before a final status of clear is achieved, and the use of the E meter

is indispensable to achieving that state. Is that not true?

A. "The use of the E meter as an aid to the auditor is necessary at this time.

* * *

[546] Q. "Yes. Then am I correct in saying that both you and Mr. Hubbard then are saying that the E meter is an indispensable aid to achieving the status of clear?

A. "To some processes, used in achieving that state, which I wish to add, as the processing of those incidents on that book are not at this time used.

Q. "The processing of the particular instances?

A. "Those particular instances are not part of the current procedure.

Q. "But in the current procedure, again, so we will understand each other, in the current procedure, utilized in auditing a pre-clear, at some time the E meter must be used in order to clear him of his past experiences, that gave rise to the confused state he may be in?

A. "His past experience and other things.

Q. "Yes.

A. "Yes.

Q. "And your answer is yes to that question?

A. "At some time, in that the E meter is necessary as an adjunct to those processes.

[547] Q. "All right. Thank you very much. Miss Routsong, are all pre-clears in the Founding Church of Scientology required to buy or obtain an E meter?

A. "No pre-clear is ever required to obtain an E meter. The auditor has his E meter. The pre-clear does not have any meter.

Q. "The pre-clear does not have to buy his own E meter?

A. "No.

Q. "Do you know who sells the E meters?

A. "They are sold in England.

Q. "By whom?

A. "They are available from the Hubbard Communications Office. They are manufactured by an

English instrument company and I just don't have the data on it. They are purchased through the Hubbard Communication Office in England.

* * *

[548] Q. "Miss Routsong, the term 'engram', is that currently in use in Scientology?"

A. "Actually, the term 'engram' is a Dianetic term [549] and as such is used in Scientology, and in Dianetics, is the study of the mind, that Scientology studies.

Q. "Well now, these emotional responses that you might get in response to a question, when you are auditing somebody on the E meter, do you contend that they occur because of the experience of engrams within the person?"

A. "Well, this is as I said, again, a difficult question to answer without teaching the course in Scientology which I am not at this time going to do.

Q. "All right. Let me ask this then. *** Does the term, 'engram' refer to these past experiences of life and other experiences that you seek to learn about when you audit a person? Is that the proper use of it?"

A. "Well, let me enlarge upon it a little bit. An engram is a moment of pain and/or unconsciousness on the part of an individual, which contains known or unknown to the individual, the perceptions of that moment, whether it is a minute or a span of time, during which there is pain and/or unconsciousness. It is a mental image of that time, containing those perceptions.

[550] "Now, in Scientology, the basic of what is — of the emotional charge that a person has, that we are trying to clear up for them through the various ways that we do it; the processes — the basic is something he has done to another. So it is, like I say, as I said, is a confessional aid. Now, sometimes this holds into place as it were, the things that were done to him, charged on that, but the basic thing we are trying to get to is the things he has done to others.

* * *

Q. "When a person is audited, the auditor seeks to have the pre-clear disclose past experiences of their life or lives — you told us — and other experiences. Now, what is a term that we may use for those past experiences of life or lives in other experiences? Emotional charges? Is that what you have been calling them?

A. "Yes.

* * *

[551] Q. *** Now, then, according to Scientology, the Founding Church of Scientology, do these emotional charges that exist within a person, give rise to organic illnesses of the body?

A. "I don't understand what you mean by 'organic illnesses.'

Q. "Actual physical illnesses, for example. May these emotional charges that you seek to clear a person of, cause ulcers?

A. "It could, yes.

Q. "Bursitis?

A. "It could, yes.

Q. "Rheumatism?

A. "It could.

Q. "Conjunctivitis?

A. "I don't know about Conjunctivitis.

[552] Q. "Cancer?

A. "It could.

Q. "Toothache?

A. "It could.

Q. "Organic brain damage?

A. "What is organic brain damage?

Q. "Let's settle for a tumor on the brain?

A. "It could.

Q. "A crippled condition of the body?

A. "A what?

Q. "A crippled condition of the body?

A. "It could.

Q. "Such as a short leg?

A. "It could.

Q. "A deformed arm?

A. "It could.

Q. "Does not the Church of Scientology teach that by processing and auditing, that these human ills that I have just listed, can be cured?

A. "Let me state, that in the creed of the church, there is a statement that — let me get that. Should I read the whole creed?

[553] Q. "I only asked you whether or not the Church of Scientology taught that by auditing a person or clearing a person, the physical ills that I listed to you could be cured?

A. "There are two statements within the creed, then, pertaining to this. Actually, one is pertaining to mentally caused ills — psychosomatic illnesses, as they are known in some fields; mentally caused ills which are actual ills. That statement says that the study of the mind and healing of mentally caused ills, should not be alienated from religion or condoned to non-religious fields.

"We have the church belief on that.

"The other statement is, we have the church belief that the spirit can be saved and that the spirit alone may save or heal the body.

* * *

[554] Q. "You told me, did you not, that these ills of the body that I have listed, crippled and deformed body; bursitis, conjunctivitis and brain tumors could be caused by mental illnesses or emotional charges. Did you not tell me that?

A. "I said they could be. I said this because, like in our experience, in handling the spirit, and for the general processing of the person through the past, without specific address to some physical illness, a person has recovered from those things. This is a statement of fact.

* * *

Q. "I want you to tell me. Miss Routsong, I want you to tell us whether the processing will cure arthritis?

[555] A. "For any specific person, I don't know, I would, for myself, I have seen arthritis alleviated and cured through processing.

Q. "Cancer?"

A. "I think that there are some instances of where cancer has been cured through processing.

Q. "Are you telling me then that processing can cure cancer in some people?"

A. "It has happened. I want to put in here that as a part of this pertaining to the pre-clear, who comes to the Founding Church for processing, that he signs a release. I wish to read the part of it pertaining to this.

"Let me finish this statement here. I want to read the part pertaining to this particular subject. He says:

" 'And I understand fully, methods used by such organization.' This refers to the Hubbard Guidance Center or the Founding Church of Scientology. 'And I understand fully and completely that the said purpose of said organizations and employed personnel, is based upon the practice of Scientology which I know to be a spiritual and religious guide intended to make persons more aware of themselves as spiritual beings, and not treating or [556] diagnosing human ailments of body or mind, and not engaged in the teaching of medical arts or sciences, and not granting scholastic degree or furnish accreditation toward college, university, or scholastic degrees.'

Q. "I am asking you what diseases of the body processing will cure, and you have told me — so there won't be any misunderstanding — that processing will cure arthritis in some people?"

A. "No, I said it has been known to cure arthritis in some people.

* * *

Q. "Name some of them [illnesses] to your personal knowledge.

* * *

[557] A. "* * * Eyesight — defective eyesight. Defective eyesight has improved totally. There is a long list, but it is difficult to think at the moment things that I know about.

Q. "Take your time.

* * *

Q. "Miss Routsong, when you left earlier to go to lunch, you did so with the idea in mind of considering the physical ills that had been cured or alleviated as a result of processing.

A. "Yes.

Q. "And you told us arthritis was one, and that full restoration of eyesight was another.

A. "Yes.

Q. "Have you thought of any others?

A. "Yes, I have thought of a few more: ulcer; toothache; impotency; nervous tension; depression; heart trouble; and bursitis.

[558] Q. "I have written down: ulcer, impotency, toothache, bursitis.

A. "Nervous tension and depression.

Q. "Now this is within your personal knowledge?

A. "Yes.

Q. "Do you know these people?

A. "Yes.

Q. "Whose eyesight was cured?

A. "I said that I would not state who the people were, as that is part of the clergyman's privilege.

Q. "So, as a minister, you are asserting the privilege?

A. "Yes.

Q. "Where these cures effected as a result of being processed, as we understand the term, in the Church of Scientology?

A. "Yes. I wish to state that they were the product of improving the well being, as it were, of the spirit, and not because of specific address to them, via processing; not because of a specific address to the illness, as it were, in the processing. We have these statements in the release that I read to you and various other things that [559] we do, with the person who comes in for processing, so that they can understand if they have some problem with their body, we are not going to address that specifically, but we are going to work with them towards spiritual clearing, as it were.

Q. "When these people were processed, were you the auditor?

A. "In some cases.

Q. "In which of the cases that you have given to me, were you the auditor?

A. "I do not wish to state that.

Q. "When they were processed, were there others there, other than you and the pre-clear?

A. "No.

Q. "Just the two of you?

A. "That is right.

Q. "What does the Hubbard Guidance Center do? What is its function here in the District of Columbia?

A. "That is the counselling or the processing division of the Founding Church of Scientology.

* * *

[563] Q. "How do you get these people to come to the Church of Scientology, Miss Routsong?

A. "How do we get them to?

Q. "Yes.

A. "I don't understand.

Q. "Does the Church advertise in the press?

A. "You have the literature of the church that is sent out. That is it.

Q. "You don't advertise in the newspapers?

A. "Oh, sometimes the Personal Efficiency Foundation which has open lectures on the subject in the evening on Scientology, is advertised in the newspapers. That is very minor advertising that is done in the newspaper.

Q. "When did you acquire these certificates that you told us you had?

[564] A. "As I say, I took the first course in Dianetics in 1950, and acquired a H.D.A. Certificate, Hubbard Dianetic Auditor.

Q. "How long did you have to study for that?

A. "I was in that course for, I believe that course was for four weeks. I then took a course called an Advanced Clinical Course in 1956. I took another one such course in 1958 and another one in 1959.

Q. "How long did you study in these course?

A. "Each of those courses was six weeks long of intensified study. In addition to that, I took the St. Hill special briefing course in England, which was six months long.

* * *

Q. "How much did you pay for these courses?

A. "The course I took in 1950 cost \$500. The course I took in 1956 was \$800, I believe and then the subsequent advanced clinical course was just a small fee of, I think it was \$50.00, something like that. The course I took at St. Hill cost \$700 and that was not paid for by me but the organization sent me over for that course.

* * *

[565] Q. "Who founded Dianetics and Scientology?

A. "L. Ron Hubbard.

* * *

[566] Q. "Did he establish the teachings that are to be pursued?

A. "That is right.

Q. "He, and he alone?

A. "I still don't understand what you mean by "he alone". He has other people who have worked with him and have helped him. He has been the leading researcher, as it were, in the field.

* * *

[567] Q. "May one disagree with one of the beliefs defined or spelled out by L. Ron Hubbard and still be a member of the Founding Church of Scientology?

A. "Yes.

* * *

Q. "What are the qualifications then for membership in the church?

A. "That a person is interested in Scientology.

* * *

[570] Q. "These exhibits that you have identified for us, 1 through 44, are they available only through the Distribution Center, Inc.?

A. "No. Scientologists throughout the country are free to buy them and redistribute them locally.

Q. "Where would they buy them?"

[571] A. "From the Distribution Center or they can be bought directly from England.

Q. "Those published in England can be bought directly from England?"

A. "I believe there are others in England other than those published in England."

MR. MADDEN: Your Honor, may we approach the Bench?

[AT THE BENCH]

MR. MADDEN: This is purely format, Your Honor. We are getting into the next page, into this material, and I wanted to know that I don't have to jump up each time by objections as I argued them —

THE COURT: You are protected on the record on your objections.

MR. MADDEN: So both mine and Mr. Brinkman's run all through here. But there will be a number of proffers here and I won't jump up on each.

THE COURT: It will be understood you have an objection to any or all of this testimony.

* * *

[579] Q. "Now, let me show you Government's Exhibit No. 17, [Exhibit 31, at trial] Scientology, the Fundamentals of Thought by L. Ron Hubbard.

"On page 51, Chapter 11: Scientology Processing. Let me read this to you:

"'Scientology is applied in many ways to many fields. One particular in specified method of application of Scientology is its use on individuals and groups of people in the eradication of physical illnesses, deriving from mental states, and the improvement of their abilities and intelligence.'

"Now, do you want to read that and tell me whether or not that is true or false?

A. "Where is that?

Q. "The beginning of the chapter.

[580] A. "What do you mean? The whole —

Q. "I will read it to you again.

Scientology is applied in many ways to many fields.'

A. "True.

Q. "'One particularly and specified method of application of Scientology is its use on individuals and groups of people in the eradication of physical illness-

ses deriving from mental states.'

A. "Yes, it says that.

Q. "Doesn't that mean then, that processing is applied to physical illnesses, contrary to what you told me?

A. "No.

Q. "Pardon me?

A. "No. It still means that the spirit is addressed as a spirit towards the improvement of the spirit, which results in eradication of physical illness. That is a by-product.

* * *

[582] Q. "Let me ask you about page 10 of the same exhibit. Miss Routsong, I will read to you from page 10.

"'Scientology in the hands of an expert (auditor) can cure some 70 percent of man's illnesses (sickness).'

"Do you want to look and see that I read it to you correctly?

A. "That is what he said.

Q. "Is that true or is that false? Is it true, Miss Routsong, that Scientology, in the hands of an expert auditor, will cure 70 percent of man's illnesses and sicknesses, as Mr. L. Ron Hubbard said in Government Exhibit 17? I want to know whether it is true or false, and on the basis of your personal knowledge?

A. "On the basis of my personal knowledge, that is [583] true.

Q. "Then is it the processing that the auditor utilizes on the pre-clear that cures 70 percent of man's illnesses?

A. "No. The processing utilized on the pre-clear improves the well-being of him as a spirit and he cures his own body, as it were.

Q. "Does the processing aid?

A. "That is right.

Q. "It aids in the cure of 70 percent of the illnesses?

A. "That is right. That is not through an address to the illness.

Q. "Can the 70 percent of man's illnesses as spelled out in here be cured without processing?"

A. "I don't know. I am not in the field of medicine."

Q. "Is it necessary to have processing to be processed in order to be cured, for a man to be cured of 70 percent of his illnesses?"

A. "I don't know the answer to that. I am only in one field."

Q. "Miss Routsong, let me read to you from page 11 of Government's Exhibit Number 17."

"'Scientology does things for people where nothing has been done before. It makes people well from illnesses which were once considered hopeless.'"

[584] "Is that true?"

A. "I have known of instances where that was true."

Q. "That Scientology has cured people of hopeless illnesses?"

A. "That is right."

Q. "Would you tell me the instances that you have personal knowledge of?"

A. "No."

Q. "Would you tell me the hopeless illnesses that these persons had that you speak of?"

A. "I will give you an example of one that I know of. I have made a list of some of them, some of the illnesses for you. One that I know about was a withered arm which grew out."

Q. "A withered arm grew out?"

A. "Yes, sir."

Q. "As a result of processing?"

A. "Yes."

Q. "In the Church of Scientology?"

A. "By the use of Scientology processing."

* * *

[585] A. "I would like to say something here that will cover the whole line of questioning that we are on here; and that it is a part of the church creed which we believe, and this is part of the creed of the church and of Scientology. We of the church believe that the study of the mind and the healing of mentally

caused ills should not be alienated from religion or condoned in non-religious fields. Also, as stated in the Articles of Incorporation, is that we believe that the human spirit is the only truly effective therapeutic agent that is available to man.

Q. "I want to know the identification of the person with the withered arm who was cured by processing of Scientology. I also want to know the identification of persons that she has testified to here in this deposition, under oath, that were cured of the following illnesses:

"Defective eyesight, arthritis, depression, nervous tension, ulcers, impotency, toothache, heart trouble, burisitis; and I believe that completes the list."

MR. HANNON: May we have your indulgence, Your Honor?

THE COURT: All right.

[Mr. Hannon and Mr. Madden conferred briefly.]

[586] MR. HANNON: Your Honor, Mr. Madden and I have agreed that we strike the last paragraph that I just read. It started "I want to know the identification of the person with the withered arm . . ."

THE COURT: Very well.

* * *

[Resuming the reading of the deposition of Marilyn E. Routsong.]

Q. "Miss Routsong, I want to say something. I want to make it quite clear to you. You did not process this person as a minister. You learned of the identification of this person with the withered arm. Therefore, I want to know the identification of that person who, by processing in Scientology, had a withered arm cured. Would you tell me who he is, please?

A. "Well, no; because it is still privileged communication. My source, as a source, is privileged communication, and I would not tell it.

Q. "This was not done by you as an auditor or in your capacity as a minister with this particular individual, from what I understood you just told Mr. Brinkman. I am not concerned at this time with

those persons that were cured when you were auditing. I am only concerned with the identification of those persons who were cured that were audited by other persons.

[587] A. "That is still privileged communication and I refuse.

Q. "You refuse to disclose the identity?

A. "That is right.

Q. "Was their identification, the identity of these people, made known to you by other auditors? Is that how you got the information?

A. "Generally. In general, the identification of those persons was made known to me by themselves.

Q. "They told you, they gave you the information and told you that they had been cured?

A. "That is right. I had known them before and after.

Q. "And they did not tell this, give you this information, at any time that you were processing them?

A. "Some did.

Q. "I am referring to the ones that you were not processing. Some of them did not, is that correct?

A. "Yes, that is right.

Q. "Which of the diseases or human illnesses, other than the withered arm, were ones that you did not process?

A. "I don't wish to divulge that.

* * *

[588] Q. "Miss Routsong, I am reading to you again from Government Exhibit Number 17 [Exhibit 31, at trial] page 11. 'One outstanding thing which it does, Scientology, it alleviates burns received from atom bombs.' Is that true?

A. "I believe it to be true. I have not known anyone who had burns in atom bombs.

Q. "Mr. Hubbard said it is true, did he not? He wrote the book. It continues, Miss Routsong: 'Scientology processing given to persons burned by radiation can alleviate the majority of the difficulty.' Is that true?

A. "I believe that to be true. I have no personal knowledge of it."

* * *

[589] Q. "Miss Routsong, I am reading from Government Exhibit Number 3 [Exhibit 10, at trial] — which is in evidence in this deposition — page 7.

"'Today, Eleanore has arthritis. She is audited whole track with 1952 techniques. Tonight she doesn't have arthritis. Miracles using whole track are plentiful. By using this data, an auditor can obtain a mest clear rather easily.'

"Doesn't this represent that by auditing arthritis can be cured?

A. "Yes.

Q. "And is it your assertion, Miss Routsong, that processing will cure arthritis?

A. "It can.

Q. "Miss Routsong, I am now reading to you from page 21 of Government's Exhibit Number 3.

"'Scientology History of Man, by L. Ron Hubbard.

"'At page 21: 'Cancer has been eradicated by auditing out conception and mytosis.'

"Is that true?

A. "He says that as a statement of fact there, that it has been done. And I believe he would not have put it on there unless he knew that to his personal knowledge.

* * *

[590] "Now, on page 24 of the same exhibit, Number 3, Mr. Hubbard said:

"'The most direct address to altering the shape and form of the mest body of the pre-clear is the auditing of the evolutionary line.'

"Does that mean that auditing can change the shape of the human body?

A. "It can.

* * *

A. "I wish to add here that statements in these books must be taken within the context of the whole books, because he [591] describes, in particular, in this book there is a series of things that he de-

scribes concerning the section you are in there now, where later on he goes on to say that is not particularly the thing we are interested in. This is curious, and it is put in there to lead to the understanding of the whole subject, but it is not specifically what would go after in processing, which he says, like that is within. I say statements must be taken in regard to the context of the whole of the book.

Q. "I understand what you are saying but, nonetheless, whatever the auditing process can be directed to can be done. The fact of the matter is that you assert, that by the auditing process and with the E meter that withered arms can be made whole and healthy and crippled legs can be made whole and healthy; is that not so?

A. "I think, in some of the cases, no E meter was used.

* * *

A. "So I don't particularly assert that.

Q. "Miss Routsong, on page 10 of this book, History of Man, which is Government's Exhibit Number 3, it recites in this paragraph: 'All incidents in this volume should be detected and audited with the assistance of an E meter.'

"What you just said, that these things are not accomplished with an E meter, is diametrically opposed to what the book recites. Is that not so?

[592] A. "You mentioned some other things in your statement. One of them was the growing out of a withered arm as a result of the processing. I don't know if an E meter was used in that case or not.

Q. "Well, what I am trying to find out is whether or not Scientology —

A. "Those particular processes, according to the way he says it in the book, they should have an E meter used with them; yes.

Q. "When he says that processing cures cancer —

A. "He said it has cured cancer.

Q. "Yes. And he says that is done with the aid of an E meter, is it not? When Mr. Hubbard asserts that auditing cures cancer, that is done —

A. "He said it has cured cancer.

Q. "That is done. Cancer has been eradicated by auditing. He said this should be done with an E meter; is that not so?"

MR. MADDEN: May we approach the bench, Your Honor?

THE COURT: All right.

[AT THE BENCH]

MR. MADDEN: This is all going in over my strong objections. However, counsel is reading from a book that calls it the Volney Mathison Electropsychometer and counsel is using [593] his own words and calling it an E meter. Now, that is an additional reason for, I think, altering these questions.

* * *

THE COURT: He is reading her testimony and the book was in front of her.

* * *

[594] THE COURT: The jury is going to have to evaluate the testimony of all the witnesses. This is her testimony, not Mr. Hannon's testimony. Mr. Hannon is just reading the question. The question as to whether she is telling the truth or not is for the jury to decide. All right, let's proceed.

* * *

[596] Q. "I refer you now to page 12 of Government Exhibit 3. If you will indulge me just a moment. I am reading from page 13 to you, Miss Routson, of Government Exhibit 3.

"'The pulp of a tooth, for instance, tracks back cell by cell to early engrams; when these are relieved a toothache in that tooth becomes almost impossible no matter how many nerves are exposed, a matter which brings about quite a revolution in dentistry.'

"Does that mean that by auditing a toothache can be relieved?

A. "Yes.

Q. "Does it mean that no matter whether the nerves are exposed that by auditing the pain from the tooth will disappear?

A. "Yes.

* * *

[597] Q. "Is Mr. Hubbard saying that auditing in this instance can eradicate physical malformations of the body, the mest body, the body that you and I wear?

A. "Yes.

Q. "Now, I am asking you, of your own knowledge, can auditing with the use of the E meter eradicate physical malformations of the human body?

Q. "Yes, auditing could do it E meter used or not.

Q. "And if the E meter is used, it is used as an aid?

A. "As an aid.

[598] Q. "Name some of the physical malformations of the body that can be corrected by auditing with the E meter?

A. "Well, I named one.

Q. "Which one, the withered arm?

A. "The withered arm. You are asking me to my personal knowledge?

Q. "Yes.

A. "I have seen obesity altered.

"Malformations, you say?

Q. "Yes. That is what Mr. Hubbard said, 'eradicates physical malformations.'

A. "I have seen people whose physical appearance altered.

Q. "Physical — Pardon?

A. "I have seen people whose physical appearance, physical-wise alter. I have seen the color of eyes change.

[599] Q. "The color of the eyes have changed?

A. "Yes.

Q. "From what to what, please?

A. "From dark to blue.

Q. "Dark what?

A. "Sort of a murky brown.

Q. "Dark, murky-brown to blue eyes?

A. "Yes. I have seen people grow, an adult grow as much as two inches in height.

Q. "How old was the adult?

A. "Oh, about thirty something.

Q. "As a result of auditing?

A. "Yes.

Q. "The person added two inches in height?

A. "Yes.

* * *

[601] Q. "What does the Founding Church of Scientology teach respecting the ability of Scientology to cure the ills of mankind?

A. "It teaches it can be done.

Q. "What ills does the Founding Church of Scientology teach that can be — what are the ills that it teaches that can be cured by processing?

A. "It teaches via the books that you are quoting from — other than that, in general. May I state this. The teaching in the church is not dwelling upon the alleviation of illness. As I said, it is through the general improvement and well-being of the spirit the illnesses of the body drop out; and we are not terribly interested in that aspect.

Q. "But, as a result of processing, you say that these things happen, that the illnesses of the body are cured?

A. "Yes.

Q. "Is that correct?

A. "That is right.

Q. "I believe you already told us that some of them are — if I misquote you, please correct me. You said cancer was one, is that correct?

A. "No, that is not on the list.

Q. "Eyesight, bursitis — The list that you gave me?

A. "This was a list of things that I have, specific [602] illnesses I have personal knowledge of, having dropped out through processing. I say 'dropped out' because these illnesses were not addressed as specifics. In other words, the auditor did not go in with the idea he was going to cure this or that illness. He was working toward the well-being of the spirit.

Q. "Does processing cure heart disease, Miss Routsong?

A. "I think I had on my list 'heart trouble'. I don't know what you mean specifically by heart disease.

Q. "All right, I will settle for heart trouble, malformations or deficiencies of the heart?

A. "No. I know of someone who had difficulties with his heart cured, as it were, healed by the processing without specific address.

Q. "What does Mr. Hubbard mean on page 53 of Exhibit 3 when he says: 'A mest body which has a weak heart had better be audited in this life time only until his heart condition entirely vanishes?

A. "Well, I do not purport to interpret what Mr. Hubbard says in the book. The book speaks for itself.

Q. "Is it a teaching of Scientology, as Mr. Hubbard has indicated, that auditing can improve a heart condition?

A. "It can. Yes, it has. I wish to say this, that in somewhat reference to that statement that the use of the gradient scale in Scientology is very important. And that in improving [603] the spirit it does it like it is little by little. You know what I mean. It is like if you improve a spirit a little bit then you confront more of life and living. You improve some more in his ability to confront these various facets of life which bothered him. He improves and things no longer bother him. So his ability to handle things regarding his body and his mind improves on a gradient scale and by the use of the gradient scale in the processing. I say that in reference to the last remark you made.

Q. "This is the marker that you utilize, that you assert cures 70 percent of man's human illness, does it not?

A. "I beg your pardon?

Q. "Is this the same method that is utilized in the assertion that 70 percent of man's illnesses or sicknesses are cured?

A. "The method by gradient scale of the improvement of the spirit; yes.

Q. "And by the way 70 percent of man's human illnesses are cured?

A. "Yes.

* * *

[604] Q. "You have no understanding as an officer of the Founding Church of Scientology respecting what these other illnesses are that can be cured by processing?

A. "I have an understanding of some of them.

Q. "What is your understanding of the other illnesses that can be cured?

A. "I believe some of them have been named in the books.

Q. "Would you name them for me?

A. "Of the Food and Drug Administration. Well, I will put it broadly. Psychosomatic illnesses or mentally caused ills.

Q. "All right. Miss Routsong, in Government's Exhibit Number 1 [Exhibit 7, at trial] on page 18, this is E Meter, 1961, by L. Ron Hubbard. He says, paragraph 52. 'The meter will also read basic metabolism.' Does the E meter read basic metabolism?

A. "Yes. I wish to say this section on body reactions [605] in Section 55 here says, 'that all of these' — that is from '48 to '54 — 'all of these are more or less body reactions and they don't affect your processing as to cross currents, as to auditor and pre-clearance. So bear up under them and skip them. They are not important ones. You know what they are. So body reactions are taught to the students so they can use that to differentiate those reads from the other reads on the E meter.'

Q. "I merely asked you whether or not the E meter can read basic metabolism as he says?

A. "I don't know. If he says so I believe he knows what he is talking about. I never tested it because I skipped that as curioso.

Q. "On page 47 of Government Exhibit 4, Scientology, Evolution of a Science, Mr. Hubbard has written:

"Knowing all the axioms and mechanisms, Scientology is easy to apply to the fairly normal individual and can relieve his occlusions and colds and arthritis and other psychosomatic illness.'

"Does processing relieve colds, occlusions, arthritis and psychosomatic ills, Miss Routsong?

A. "Yes. As I delineated before, by address to the spirit.

Q. "Now, it also recites at page 44: 'It so happens [606] it is known that a clear can control all his body fluids.' Now, first, would you tell me what a clear is? And don't tell me in terms of something that has been cleared. It is a person that has been cleared of what?

A. "I did answer it this morning. I said a clear is a spiritual being who has had the confusions and difficulties of his past existence or existences, as it were, erased.

Q. "And by processing?

A. "By processing.

Q. "And after this has been accomplished may a clear control all his body fluids?

A. "I don't know.

Q. "You don't know whether Mr. Hubbard is correct in saying this?

A. "He has said it, and he has had things to do with clears and clearing, and when he says it I believe it.

Q. "Do you know what he means by saying that a clear can control his body fluids?

A. "The fluids within his body.

Q. "Including the blood flow, for example?

A. "Yes, I suppose so.

Q. "Now, Mr. Hubbard also says: 'The reactive mind does a job of that. Meaning controlling his body fluids. Reactive mind says things have to be such and so, and that is [607] survival. So man grows a withered arm. That is survival.'

"What does that mean?

A. "Let me see the book, please?

Q. Yes, surely. It is this bottom paragraph here, page 44, that I am reading from.

A. "Well, I am not going to purport to interpret what Dr. Hubbard has written here. The books states it plainly enough except for this. When he says the reactive mind says things have to be such and so and that is survival. So a man grows a withered arm. That is survival. He means that it is the reactive mind has the consideration, that is that it is survival. It does not mean that it is actual survival. It is a sarcasm. It goes on to say: 'Or he has inability to see, hysterical or actual blindness. That is survival.'

Q. "So it is a tongue-in-cheek statement by Dr. Hubbard?

A. "That is right. That is right. It really is not, but it is interpreted via the reactive mind as being survival. It is misalignment of data.

Q. "As a person grows old, Miss Routsong, frequently senility sets in. Can processing with the E meter cure senility?

A. "We believe that processing can cure or alleviate senility whether with the E meter or without.

Q. "But the E meter is used, it is used as an aid to the curing of senility?

[608] A. "It is used as an aid in the communication between the auditor and the pre-clear.

Q. "And to that extent it is an aid in the curing process, is it not?

A. "That is right, it is a tool.

Q. "But it is the processing that you say brings about the cure?

A. "It is the spirit himself that brings about the cure. The processing is an aid to that.

Q. "And in addition, Mr. Hubbard has widely stated in various publications, that the intelligence quotient of a person can be substantially increased by processing; is that true?"

* * *

A. "Yes.

Q. "Do you teach that that is so?

[609] A. "Yes.

Q. "And that is brought about through the use of the E meter as well, the quotient?

A. "In the same adjunct as I had formerly recited; yes.

Q. "On page 21, Sanity for the Layman, which is Government Exhibit Number 23 [Exhibit 21, at trial] Raymond Kamp has recited:

"As an example, a hand crushed in a deck chair took six hours to return to normal, a cracked collarbone ten hours, and a second-degree burn from an exploding coffee percolator healed without scarring in one week."

"Does he attribute that to processing?

A. "I have not seen the book. Is this a book by Raymond Kamp?

Q. "Yes.

A. "I wish to say this. I have not read all of this book but I would presume, from what has been said just prior to it, that he meant by processing.

Q. "That processing can expedite the healing of a crushed hand?

A. "Yes.

Q. "What other reference does he make?

A. "Cracked collarbone and second-degree burn.

Q. "The processing can cause a cracked collarbone to heal faster than otherwise?

[610] A. "Yes.

Q. "And that burns of the body will heal substantially faster by processing than they would without processing?

A. "Yes.

Q. "And is this true?

A. "Yes.

* * *

[612] Q. "Now, when one goes to the Church of Scientology for intensive processing, is he charged for the processing?

A. "There is a fee for the processing; yes.

Q. "What are the fees currently being charged?

A. "What is the question again?

Q. "I want you to tell me the fees that are charged for processing by the Church of Scientology?

A. "All right. The fees for processing are \$550.-00 for 25-hour intensive; and there is a student and professional rate for those people who are students or professionals; and that rate is \$275.00.

* * *

[613] Q. "Isn't there a course in which you are assured that for so much money that you will achieve the status of clear?

A. "No.

Q. "I show you Government Exhibit 99 B-C. It is issue number 72 of Ability."

MR. HANNON: That should be 9 B-C, Your Honor. It is Issue Number 72 of Ability.

[Resuming the reading of the deposition of Marilyn E. Routsong.]

Q. "On page 8 of this document, at the top, it shows the face of three men. It says: 'Sad, Mad, Glad. We don't care what your problem is, we can clear you with the Hubbard Guidance Center.' And then it shows a picture of another man underneath. 'Glad he came in. The regular processing rates. For further information write the Registrar, 1812 Nineteenth Street, Northwest, Washington 9, D.C.' Then at the bottom: 'If you are no gambler you can have a clear guaranty, \$5,000.00, regardless [614] of how many hours it takes.

* * *

Q. "Does that refresh your recollection regarding whether or not there is a guaranteed course?

A. "That is not a course.

Q. "What is it?

A. "That is processing at the Hubbard Guidance Center as differentiated between a course. A course is a course of training in Scientology.

* * *

Q. "Is there a guaranteed processing intensive?

A. "There was at this time as delineated here; yes, sir.

Q. "For \$5,000.00 the status of clear was guaranteed?"

A. "Yes."

* * *

[622] THE COURT: Are we ready for the jury?

MR. MADDEN: Your Honor, may I, before the jury comes in, renew all my previous objections including those as they show in the transcript for Mr. Brinkman?

THE COURT: Very well. Call the jury.

(The jury enters the courtroom.)

THE COURT: *** All right, let's proceed.

* * *

[623] MR. HANNON: Now, I return to 249, Your Honor, at the top:

Q. "What was your ministerial capacity when the names came to you? What were you doing when you say it was ministerial capacity? Acting as secretary?"

A. "That is right, part of the time."

Q. "Is that a ministerial capacity?"

A. "Whenever you function as Executive Secretary you are also acting as minister."

Q. "And any and all information that comes to you in your capacity, while you are acting as an Executive Secretary, you say is privileged, and you refuse to disclose it?"

A. "Pertaining to individuals that came for processing, yes."

MR. HANNON: On page 250, Your Honor, please.

Q. "But this information, again, came to you in the capacity of Executive Secretary? You had approved the free processing for them, had you not?"

A. "No."

Q. "How did the information come to you?"

A. "Through my position in the organization."

Q. "As what?"

A. "As an Executive Secretary."

[624] Q. "That is what I asked. So, the information came to you as an Executive Secretary. Were

you required then to approve the free auditing?

A. "No, the data was given to me as an executive, in the line as knowing what was going on within the organization.

Q. "For administrative purposes?

A. "That is right, and for the functioning of the church.

Q. "And I respectfully suggest to you, Miss Routsong, that is not privileged information within the privilege you are asserting here. I ask you, again, for the names.

A. "Within the ethics of Scientology, and the church, it is privileged information.

Q. "When the fee of \$550 is paid for 24 hours of auditing, to whom is the money paid?

A. "To the Founding Church of Scientology.

Q. "What does the Founding Church of Scientology do with the \$500, Miss Routsong?

A. "It is used for the general functioning of the church, and its works.

Q. "How much of it goes to the auditor that is doing the processing during the 25 hours?

A. "Whatever his pay is for that week.

[625] Q. "Is he on salary? How are the auditors paid, Miss Routsong?

* * *

A. "The auditors are paid on a weekly basis, based upon what is called the unit value of that week.

Q. "How is the unit value of the week determined?

A. "There is a formula for determining unit value. It is dependent upon a portion of the income for the week before.

* * *

[633] Q. "Now, after the status of auditor is achieved through a course of study in the Church of Scientology, do these auditors set up a practice on the outside?

A. "Some do. I don't understand what you mean by the outside. You mean —

Q. "Outside the Church of Scientology. Don't they open up their own offices?

A. "Some do, yes.

Q. "And they act as private practitioners?"

A. "Yes, some do."

Q. "Now, what connection is there between these people that set up offices as private practitioners of Scientology, and the Church of Scientology itself?"

[634] A. "Most of them, some of them set up centers that are called franchise centers and have various scientological activities. Or some of them set up a congregation."

Q. "Where do they get their Franchise?"

A. "From the World-Wide Office."

Q. "Where is that located?"

A. "In England."

Q. "And what is the name of it? What is the name of the World-Wide Office?"

A. "World-Wide Communications Office."

Q. "Do they pay for the franchise?"

A. "No."

Q. "They obtain it without any cost whatsoever?"

A. "Yes."

Q. "Now, they contribute to the World-Wide Office for receipt of various technical materials."

Do they pay dues to the World-Wide Office?"

A. "No."

Q. "Do they pay any money to the Church of Scientology, here in the District of Columbia?"

A. "There is none that is required of them, no."

Q. "So, the only costs incurred or due from an auditor that sets up a private practice to the World-Wide Office is for any material that he might utilize [635] in his private practice?"

A. "Yes."

* * *

Q. "Miss Routsong, could you tell me the number of persons that are pre-clears that are now undergoing a processing or auditing at this Founding Church of Scientology, here in the District of Columbia?"

A. "This week?"

Q. "Yes."

A. "I can't tell you the exact number."

Q. "Approximately?"

A. "Approximately two or three.

Q. "Approximately how many persons are cleared or undergoing the processing or auditing of the Church of Scientology during the course of any week — the average?

A. "Oh, at this time it might be around five, I don't know.

* * *

[636] Q. "Is there a staff at the Church of Scientology here in the District of Columbia?

A. "A staff?

Q. "Yes.

A. "There are the people who work there, referred to as the staff.

Q. "Could you name them and identify them by their office for me, please?

A. "That would be a little difficult to name all of them from memory.

Q. "Let's start with the Assistant Pastor. That is Mr. Fudge, is it not?

A. "Assistant Pastor is Mr. Joseph Bellotti. Mr. Fudge has the post called the Continental Director.

Q. "All right.

A. "There is the Organizational Secretary, which is Wayne Rohrer.

* * *

A. "There is the Director of Processing, David Aldrich. The post of Director of Training is also occupied by Wayne Rohrer. There is the Director of Enrollments. His name is Joseph Breeden.

* * *

[640] Q. "Doesn't Scientology teach that, by processing, psychosis can be cured? Pardon me, are you thinking?

A. "Scientology teaches psychosis can be cured.

Q. "Through processing and auditing?

A. "That is correct.

* * *

[640-a] Q. "Doesn't Scientology also teach, Miss Routsong, that processing or auditing can cure the

physical ills in less time than the curing process would take if processing or auditing were not used?

A. "Yes.

Q. "And page 43 of Government Exhibit 35, at the bottom paragraph, it reads, for example:

'A bruise turned utterly black and covering the person's entire hip passed away in 45 minutes of good auditing. It was done by keeping the right hip from going away, and then the left hip from going away.'

Doesn't that mean, and doesn't Scientology teach that the auditing process can cure the physical ills of the body, such as bruises, faster than they [641] would otherwise heal?

A. "That is true.

* * *

[644] Q. "Is it true processing and auditing can cure hypertension, combat fatigue, tuberculosis, arrested myopic astigmatism?

A. "That is true.

Q. "Is it still true?

A. "Yes.

Q. "And Scientology teaches it can be done?

A. "Could be done, but processing would not aim toward those things.

[645] Q. "I understand. Processing is aimed toward a spirit, but the result is these ills can be cured?

A. "It could be.

Q. "And that is the teaching of Scientology?

A. "Correct.

Q. "And the Founding Church of Scientology, more specifically?

A. "Yes.

Q. "Now, in Case No. 2, which is set forth on page 95 of Government's Exhibit No. 41, relates to apathy involving the pre-clear who had been under psychiatric treatment for two years prior to dianetic treatment and who had experienced no relief from malnutrition. Now, in 1948, was it true that Scientology taught that apathy could be cured by processing?

A. "Yes.

Q. "Is that still the teaching of Scientology today?"

A. "That apathy could be cured by processing?"

Q. "Yes."

A. "Yes."

* * *

[650] Q. "And isn't it the teaching of Scientology that processing and auditing can cause a person's temperature — a person who is running a high temperature — to drop substantially?"

A. "It could, yes, through address to the spirit."

Q. "And Scientology teaches this?"

[651] A. "Yes."

Q. "Through processing. This happens through processing?"

A. "Yes."

Q. "Are you familiar, Miss Routsong, with the three methods of disseminating information relating to Scientology? They are published, if you will, in Government's Exhibit No. 21 [Exhibit 20, at trial] which is L. Ron Hubbard's PABS, Book 5. Are you familiar with the book?"

A. "I am familiar with the book. I need refreshing on it."

* * *

[653] Q. "Do you have any membership in the Church?"

A. "It is open doors church to any and all."

Q. "Is the membership fee when you come in?"

A. "To come into the church?"

Q. "Yes."

A. "No."

* * *

[665] Q. "Now, Miss Routsong, does that mean, and does the Church of Scientology teach, that auditing and processing can raise the Intelligence Quotient of a person one point for each hour they are processed?"

A. "Through address to the spirit, within limit."

Q. "Within limit. But the processing can raise a person's IQ one point for each hour of processing, is that correct?"

A. "It could, yes, through address to the spirit."

* * *

[666] Q. "Does it say that the use of an E-meter in auditing is required?

A. "No.

Q. "Doesn't it say it is imperative by an auditor who wishes to really audit effectively?

A. "It is by an auditor who wishes to really audit effectively.

Q. "So, may we agree that processing and auditing in order to be effectively done, must utilize the E-Meter?

A. "It is a very good tool, yes.

Q. "Well, I understand it is a very good tool, but [667] I am asking you whether or not we can agree that that auditing and processing, in order to be effectively accomplished, an auditor must use an E-Meter?

A. "That is what it says, yes.

Q. "And do you agree with that?

A. "Yes, I do.

Q. "You do?

A. "Yes, on most processes.

* * *

[669]c] Q. "Miss Routsong, let me ask this: Isn't it true the only use that the E-Meter is in the clearing process?

A. "That is the only use I know of is in the [669-d] process of clearing through Scientology for the processes. I suppose you probably could use it for an E-Meter, that there could be other uses, I don't know."

* * *

[670] Q. "Miss Routsong, let me ask this. Isn't it true that the only use of the E-meter is in the clearing processing?

A. "That is the only use I know of, is in the process of clearing through scientological process. I suppose you probably could use it for an Ohm-meter. That there could be other uses I don't know.

Q. "The only ones you know of are auditing and processing?

A. "That is correct.

* * *

[679] Q. "Suppose somebody had — their vision had been seriously impaired by virtue of cataracts. Can processing cure their deficiency or can processing as a [680] result of processing can they be made to see?

A. "Are you asking me for an opinion?

Q. "I am asking you whether scientology teaches this.

A. "That there is a possibility that it could, yes, through address through the spirit.

Q. "Government's Exhibit 9-CW, which is Abilities 100-M at Page 15, the statement appears: 'An individual processed up to theta clear is radiation proof.' Tell me what theta clear is?

A. "Theta clear is a state where a person can become exteriorized from a body through their own control.

Q. "Can you tell us briefly how a person exteriorizes from his body?

A. "He just gets out of his body.

Q. "Are you capable of exteriorizing yourself?

A. "I have done it. I cannot do it at this time.

Q. "When you are exteriorizing yourself in scientology, what happens to the person? What does the person do?

A. "I don't understand the question.

Q. "Can you tell me what happens to a person who exteriorizes himself? How does he exteriorize himself?

A. "I can't answer that as to how there is a how.

[681] Q. "You cannot tell me how to exteriorize?

A. "The spirit exteriorizes from the body.

Q. "May the spirit, after he exteriorizes himself from his body live apart from the body?

A. "He could operate the body from outside the body rather than from within.

Q. "So that he could, having exteriorized himself, he could still cause the body to function?

A. "That is right.

Q. "Is there any limitations that result to the body after a person has exteriorized himself from the body?

A. "Limitations?

Q. "Yes. Does the body function as well?

A. "Yes, or better.

Q. "Now, then, you have told me, if I am correct, that a theta clear is a person that is capable of exteriorizing himself?

A. "Yes.

Q. "Are you a theta clear?

A. "Am I a theta clear?

Q. "Yes.

A. "No.

[682] Q. "Even though you have been capable of exteriorizing yourself?

A. "No, I said capable of exteriorizing themselves any time they want.

Q. "Do you know a theta clear?

A. "No, I don't know of anyone that I know to be a theta clear.

Q. "Have you heard of anyone that is a theta clear?

A. "Yes.

Q. "Who?

A. "I can't remember the names. I remember back in 19 — well, 1953, of some people who were said to be theta clears.

Q. "And processing achieves a status of theta clear?

A. "Through processing, that is the action of theta clear.

Q. "And through that extent, processing can make a person radiation proof?

A. "In that extent, yes.

Q. "Miss Routsong, I asked you the last time you were here respecting how auditors in the Church of Scientology were paid and you had indicated to me they were paid in accordance with some type of formula.

[683] A. "Yes.

Q. "What is that formula?

A. "To my knowledge, the gross income for the week, certain things are subtracted from that, would

[679] Q. "Suppose somebody had — their vision had been seriously impaired by virtue of cataracts. Can processing cure their deficiency or can processing as a [680] result of processing can they be made to see?

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[683] A. "Yes.

Q. "What is that formula?

A. "To my knowledge, the gross income for the week, certain things are subtracted from that, would

not become a part of a formula, and the remainder is divided into 55 per cent for the pay roll, for the people working in the church. And the rest of it is divided, I think, let's see, it would be 25 and 20; 25 per cent to the expense of running the church and 20 per cent to the building fund, as it were, to pay for the buildings and the maintenance and so forth.

* * *

Q. "I asked if any of the monies taken by the Founding Church of Scientology are paid over to or distributed to L. Ron Hubbard.

A. "L. Ron Hubbard has an annual salary for work he does for the church.

Q. "You know what his salary is?

A. "I am not sure. I believe it is \$25,000 a year.

Q. "\$25,000 that he gets from the Founding Church of [684] Scientology?

A. "I believe this money goes to a — well, I can't remember whether it is for research that he does, but it is conceived to be his salary. I don't think it is used personally by him.

* * *

[689] Q. "Does the church run any boarding houses up there around its location?

A. "The church has one building used to — no, no boarding houses. One where it used to rent rooms. doesn't need to now.

* * *

[691] Q. "Is there any organization or any person other than L. Ron Hubbard, aside from the employees that you mentioned earlier, that charge the Church of Scientology for its or their services?

* * *

A. "When we purchase the services of a lawyer, we pay the lawyer.

* * *

Q. "Does the Founding Church of Scientology realize income from any franchises, either or auditors in private practice or other groups associated in the scientological movement in the United States?

[692] A. "No.

* * *

Q. "Are there E-meters in use now in the Founding Church of Scientology?"

A. "Various individuals have E-meters, yes."

* * *

[693] Q. "There was a time when scientology was not a church, isn't that so? It became a church some time in 1955?"

A. "Well, there were earlier churches in scientology, but there was a time before which there were not any churches."

* * *

Q. "When scientology did organize as a church activity, wasn't there wide dissension about this?"

[694] A. "No."

Q. "Was everybody in agreement that they should organize as a church activity?"

A. "I don't know. Everyone I knew of was."

Q. "Isn't there such a thing as medical dianetics?"

A. "Not that I know of. May have been a reference to it in the book. I don't know of anything other than that."

Q. "Well, let me show you Chapter 5, Page 31, Science of Survival, written by Mr. Hubbard, which is Government's Exhibit 29 [Exhibit 27, at trial] and ask you whether Chapter 5 isn't devoted to medical problems."

A. "The name of the chapter is Medical Range."

Q. "Turn the next page, if you will. What does this say?"

A. "It is another part of medical dianetics, the dianetic assist. Any very recent engram can be run with impunity. Picking up engrams of injuries which have just happened demonstrably shortens the term of recovery and increases life potential threatened because of the accident. Shock occasioned by operations and accidents is rendered less dangerous according to the observations by the dianetic assist."

[695] Q. "Thank you, Miss Routsong. May I ask now, didn't dianetics direct itself to the physical ills of mankind directly?"

A. "I don't understand what you mean by directly."

Q. "Wasn't one of the purposes of medical diane-

tics to improve the physical ills of mankind? Wasn't that one of its primary purposes?

A. "One of its purposes as delineated here was to assist a person who had just been recently injured.

Q. "Isn't it true scientology does the same thing?

A. "Scientology purports to assist people.

Q. "And isn't one of the purposes of scientology to assist people with physical injuries?

A. "Yes, through spiritual address.

Q. "I understand it is through spiritual address, but scientology does direct itself in a very important fashion to curing the physical ills and injuries of mankind?

A. "Is that a question?

Q. "Yes.

A. "Scientology purports to assist mankind whatever his difficulties are. If it is physical injury and scientology can help through addressing the spirit to that, [696] it helps.

Q. "But more than that. You say if it can help. Don't you teach it can help?

A. "We teach it can help, yes.

Q. "Through processing these things can be cured?

A. "Yes."

MR. HANNON: May I have your indulgence, Your Honor, please.

Your Honor, that concludes the Government's part of the deposition from Miss Routsong. We offer that deposition into evidence.

THE COURT: That will be received. All right.

(Whereupon, the document referred to above — deposition from Marilyn Routsong — was received in evidence.)

* * *

MR. MADDEN: I have two matters. There is some cross [697] examination here. Am I correct? I need the Court's advice on this. If I now just read the cross examination from here, that would not interfere with the motion for directed verdict?

THE COURT: No. You are entitled to read that.

* * *

MR. MADDEN: Now, Your Honor, on the offer if we could go through now, too. I want to renew my objections as to relevancy of the timeliness. No reference to the E-meter and the Fourth and First Amendment objections.

THE COURT: Overruled. ***

* * *

[698] MR. HANNON: He says I want to renew my objection as relevant. I recall no objection as to relevancy at any time prior to this, Your Honor.

I want to state for the record. He may have, but I don't recall.

MR. MADDEN: I said it couldn't possibly be relevant if it was a book written five years before the device was invented.

MR. HANNON: You are talking about the E-meter.

THE COURT: Let's proceed.

* * *

[700]

CROSS EXAMINATION

BY MR. BRINKMAN, READ BY MR. MADDEN:

Q. "Miss Routsong, do you have any religious belief?

A. "Yes.

Q. "What is it?

A. "Scientology.

Q. "Are you a minister of the Church of Scientology?

A. "Yes.

Q. "When were you ordained?

A. "On February 25, 1956.

Q. In the positions which you occupy with the Founding Church of Scientology, are you required to be qualified to fill those positions? Are you required to be a minister?

A. "Yes.

Q. "Now, you have been asked to identify a very large number of exhibits, various printed books, pamphlets and so forth. Are those all in use as valid parts of the creed or practices of scientology at this time or within the past year or two?

A. "No. Some of the books are used for historical

interest and for background data for the study of scientology because it is an evolutionary thing, and [701] to show what it has evolved from.

Q. "Are they all part of the dogma or creed required to be believed by members or ministers of the church as part of their belief in scientology?"

A. "No, there is no required beliefs in scientology.

Q. "No belief whatsoever?"

A. "No, only an interest in scientology and interest in its principles, but there is nothing required.

Q. "Well, does the church have any creed or principles?"

A. "Yes, the church has a creed."

MR. MADDEN: Would you go to the bottom of Page 328.

BY MR. MADDEN:

(reading)

Q. "And what does the document contain?"

A. "It contains a description, What is Scientology. It contains the Creed of the Church and the Code of Honor.

Q. "And are those various matters contained in it now in effect?"

A. "Yes, it is.

Q. "And during what period has it been effective?"

A. "Since early in the church, 1955.

* * *

[703] Q. "Can you tell us in simple language the basic purpose [704] or use of the so-called E-meter?"

A. "It is used as a confessional aid in assisting to determine the emotional reaction of the spirit.

Q. "Is it ever used by authority of the church in diagnosing or treating disease?"

A. "No, never.

Q. "Is it a precept of the church or is not the information which is obtained in this confessional process utilizing the meter to be held in confidence as a religious confession?"

A. "It must be held in confidence.

Q. "Are there any instructions requiring such information involving the use of the meter to be kept in

entire confidence as part of the religious confession?

A. "By instructions you mean to —

Q. "Any instructions of any kind to people who use the meter?

A. "Yes. They are told that it must be held in confidence.

Q. "Are the people who are processed, so-called pre-clears, advised or are they not advised that whatever they say will be dealt with in confidence?

[705] A. "They are advised.

Q. "They are so advised?

A. "Yes, they are.

Q. "You have testified that through the method of spiritual address you believe there have been instances of healing of bodily ills. Do you know whether the church has or has not, authority, legal authority, to perform healing?

A. "Yes, I do. The By-laws of the District of Columbia, you can heal by spiritual means. It is outlined in the articles of incorporation in the church.

Q. "You have seen those articles?

A. "Yes, I have.

Q. "Of incorporation and they do contain such authority?

A. "Yes.

Q. "What requirement, if any, is there for membership in the Founding Church of Scientology in Washington, D.C.?

A. "An interest or belief in the principles of Scientology.

Q. "Are there any pew rents charges for the use of pews or anything of that kind, or is there any door charge or door collection, anything of that sort?

[706] A. "No.

Q. "And do you know of any other religious organization that practices healing by spiritual means?

A. "Yes, the Christian Science Church does and I believe the whole christian religion does as the study of the Bible where healing by spiritual means was done.

Q. "I see. And you have a belief in the power of spiritual healing?

A. "Yes, I do.

Q. "This is a basic part of the religious belief of scientology?

A. "Yes.

* * *

[708] Q. "Now, you have testified that you know of certain cures or alleviations of physical illnesses or perhaps deformation and malformations. In what way did you acquire that information.

A. "As a minister.

Q. "Your knowledge came to you as a minister?

A. "That is right.

Q. "In the course of your duties or other ways?

A. "That is right.

MR. MADDEN: I have no further questions, Your Honor. That is the end.

[709] THE COURT: All right.

MR. HANNON: I have a few questions.

* * *

MR. HANNON: We are now at the bottom of 337, Your Honor.

* * *

BY MR. HANNON:

Q. "You have told Mr. Brinkman in response to his question that the E-meter is a confessional device?

A. "Confessional aid.

Q. "Confessional aid. And that ministers in the Church [710] of Scientology are under instructions that information they receive in the auditing process is to be kept confidential?

A. "That is true.

Q. "These are oral instructions only, are they not?

A. "To the ministers. The ministerial study code of scientology and the auditor's code.

Q. "Does the Code of Scientology spell out that information received is to be kept confidential?

A. "I don't have a copy here. The auditor's section has a code that deals with that.

Q. "Is the auditor a minister?

A. "Yes.

Q. "You mean all auditors are ordained ministers, Miss Routsong?

A. "Most of them are.

Q. "Well, not all auditors are ministers, are they?

A. "Not per se, no. Most of them are.

Q. "Now, then, have you told us that the information acquired by the minister in auditing is to be kept confidential pursuant to the auditor's code?

A. "Yes.

Q. "Is there anything that says that information acquired [711] by an auditor who is not a minister is to be kept in confidence?

A. "An auditor is bound by the auditor's code whether he is a minister or not.

Q. "But he is not a minister when he acquires this information however, is he?

A. "He is what is known as the student minister.

Q. "He is the student minister but he is not ordained?

A. "No, not as a student. He is working toward his ordination. When he is studying he is in the cloister at the Church. He can't be ordained until he is graduated from it.

Q. "And as a matter of fact, it is also true, is it not, from what I understand from what you have told us earlier, that there are auditors who have not been ordained who have been practicing scientology in their own fashion in their own private fashion, are they not?

A. "Some are, yes.

Q. "And some of these are connected to the Church of Scientology?

A. "At some point they might possibly.

Q. "Or is it not?

[712] A. "Most are connected to scientology at some way or another.

Q. "I know they are in scientology or practicing scientology, but not connected?

A. "They are affiliated. I don't know whether there is — by what do you mean connected?

Q. "They are not functioning as an official of the Church of Scientology?

A. "No.

Q. "Am I to understand the information they receive from process of auditing, that that is to be kept in confidence?

A. "Yes.

Q. "Are they engaged in a process of confession?

A. "Yes.

Q. "Even though they are in private practice?

A. "That is true.

Q. "Each has his own religion?

A. "As a scientologist you are not required to give up any other religion a person has, so they might be involved in another religion as well as scientology.

* * *

[716] Q. "In 1958, Miss Routsong, wasn't it recognized in scientology and more particularly by L. Ron Hubbard that the status of a clear could be achieved?

A. "I believe I explained that before.

Q. "Well, explain it to me now. My question is: Isn't it correct that back in 1958, that Mr. L. Ron Hubbard and scientology recognized that the status of clear could be achieved?

A. "Yes.

Q. "Then in Government's Exhibit 9-BA which is Issue 71 of Ability, at Page 3, Mr. Hubbard said, a clear can be tested for any and all psychosis, neurosis, compulsions, and all aberrations and can be examined for any autogenic (self-generated) diseases referred to as psychosomatic ills. These tests confirm the clear to be entirely without such ills or aberrations.

"Now, if you like, you can examine that definition.

"Isn't that the definition of a clear? Someone without aberrations?

[717] A. "That is the definition in that book.

Q. "Now, is it that Mr. Hubbard is saying in 1958 that the status of clear could be achieved and people could be without aberrations and now he has changed his mind about that?

A. "No.

Q. "May the status of clear, that is a person without aberrations, be achieved through processing and auditing?

A. "Yes.

Q. "But that no longer is a definition of clear as I understand you are saying.

A. "That is included in a definition of clear.

Q. "But something more is required now?

A. "It is not a requirement. It is a state of spiritual existence that is being defined. Requirement sounds like it is something that to belong to a certain class one would have to do certain things. This is a state that is being worked toward.

Q. "Well, is a clear a person who no longer has any aberrations?

A. "Yes.

* * *

[724]

WILL N. SWAIN

was called as a witness for and on behalf of the Government, and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DODELL:

* * *

[725] Q. What is your occupation, Mr. Swain? A. I am an official with the Food and Drug Administration. I am at present head of the Legislative Services Group of the Office of Legislative Services in the Office of the Commissioner.

* * *

[727] Q. And have you read publications in connection with the Hubbard Electrometer? A. Yes, I read quite a few publications.

Q. Could you describe generally the publications that you have read? A. Yes. There have been a number of leaflets or folders of one sort or another relating to Scientology and Dianetics, and the Hubbard E-Meter. I have read a number of hardbacked books that are related to that activity.

Q. More specifically, are you familiar with the material that was seized in connection with this case that is presently pending in court? A. Yes, I have read all of the material that was seized and I have read several other pieces that were related but not happened to be involved in the seizure action.

Q. What would be your guess roughly of the quantity of pages that are involved in what you have just mentioned in reading material, in your reading of the material? [728] A. I made a rough count at one time and I believe the number of pages is somewhere in the neighborhood of 25,000 to 27,000 pages.

Q. Did you understand everything that you read in this literature? A. No, I did not understand parts of it.

Q. Could you explain that answer, Mr. Swain? A. In the literature there were a number of words which seemed to have been devised by the author, they were not ordinary words you would find in the dictionary; and other places in the literature you might be able to find a definition or variety of definitions for these coined words. Some words that were ordinary words that seem to have special meanings in the context of this literature and also the writings were involved and complex, convoluted and some places it seemed they worked themselves into a non-sequence of situation where the subject seemed to start off in one direction and wind up with a different answer at the end of the sentence.

In reading the material I did try to get some comprehension of what I was reading and there were places, and a great deal of literature was plain English language and I understood what is being said.

* * *

Q. [841] Mr. Swain, is there any other place in the literature that you have read where there is an indication as to what are the essential books to be read or understood by a person in order to understand Scientology? A. Yes.

Q. And where would that be? A. "Ability", 126.

Q. I show you Government Exhibit 9CY that has been marked for Identification, and I ask you is this

the publication to which you made reference? A. Yes, this is issue 126 of the periodical "Ability".

Q. Do you know when that was written, Mr. Swain?

A. It has a date on it, March 1961.

Q. What does that publication state as to the essential books to be understood in learning about Scientology, and would you indicate the pages on which the reference appears? A. On page 2, it starts off with the title of the book:

"Dianetics: The Modern Science of Mental Health by L. Ron Hubbard.

[842] 'Man is good. Take away his basic aberrations and with them go the evil of which the Scholastic and the moralist were so fond. The only detachable portion of him is the 'evil' portion. And when it is detached, his personality and vigor intensify.'

"This is a quotation from the book. To learn how man's basic aberrations may be detached from his mind, read Dianetics: the Modern Science of Mental Health.

"This, the first book on Dianetics and Scientology by L. Ron Hubbard is more than ever in the news since Ron lectured on the Anatomy of the Human Mind at recent Congresses.

"Reading this book is the first major step toward a literate and constructive attitude to the mind. Study of this book is something auditors return to again and again, as current theory refers them back to Book One.

"Order from: The Distribution Center, Box 242, Silver Spring, Maryland. Price \$4.00. Discounts Apply.

"You will find more vital information about the most interesting subject in the world — yourself — in every Scientology and Dianetics book. Material is not [843] repeated, except to be further amplified to produce greater understanding. Each book by L. Ron Hubbard is a fresh adventure into the nature of Man and his mind.

"Enclosed is this issue of Ability you will find a complete list of Scientology and Dianetics books.

Look it over and see if your library is complete. If there are any books here you do not have you can order them by marking the appropriate square and sending the Book List to The Distribution Center, Box 242, Silver Spring, Maryland.

"Give your friends Scientology Books — it is the best gift you could ever give them.

"The Founder of Dianetics and Scientology is L. Ron Hubbard."

Q. Is there any reference to the Hubbard E-Meter or Hubbard Electrometer in that pamphlet? A. On page 8, at the bottom of the page, there is an entry:

"Ray Electronics is now the sole distributor of the Hubbard Electrometer in the Americas. Order now from Ray Electronics, 1717 S.W. Parkview Court, Portland 1, Oregon. The price is \$89.50 (including tax). This is the same meter to which you have been accustomed."

* * *

[844] Q. Is there any other reference in the literature that you read, Mr. Swain, that indicates the basic or essential books which a person must read to understand Scientology? A. Yes, "Ability", 124).

Q. I show you Government Exhibit 9CX, and I ask you whether this is the publication to which you make reference? A. Yes, this is issue 124 of the "Ability" periodical. "Anatomy of the Human Mind Congress, lecturer L. Ron Hubbard".

Q. Do you know when that publication was written, Mr. Swain? A. Indicates this is the Congress Issue 124, January 1961.

Q. And would you indicate for the ladies and gentlemen of the jury and for the Court, Mr. Swain, the passage to which you make reference in which there is a discussion of the essential books to an understanding of Scientology? [845] A. Yes, on page 2 there is an entry concerning books. Diagonally, in the upper lefthand corner is the word "books", and the word "new" with a sort of circle around it, n "American edition" and title, "Have You Lived Before This Life?", by L. Ron Hubbard."

"The Story (in many individual case stories) of the 5th London ACC.

"American Edition — \$3.50 plus 20 cents postage.

Discounts apply."

Then there is a divider across the page and series of dots. Then:

"Dianetics:

The Modern Science of Mental Health — \$4.00

The basic book of Dianetics. Understanding of this book is essential to the understanding and use of Scientology. By L. Ron Hubbard."

Then the book:

"Science of Survival

Prediction of Human Behavior — \$7.50

The monumental work on the Tone Scale. The full Hubbard Chart of Human Evaluation around which this book is written is included with the book. By L. Ron Hubbard."

[846] And there are other books listed and the address: "The Distribution Center, Inc., Silver Spring, Maryland."

Q. Is there any reference to the Hubbard E-Meter or Hubbard Electrometer in that issue of "Ability"?

A. Yes, at the bottom of page 11 there is an entry that:

"Ray Electronics is now the sole distributor of the Hubbard Electrometer in the Americas," and essentially the same text I read from the previous issue.

* * *

[961] THOMAS McPHERSON BROWN

was called as a witness for and on behalf of the Government, and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DODELL:

* * *

Q. What is your profession, please? A. I am a physician and teacher — investigator in medicine.

* * *

Q. What is your present position, Dr. Brown? A. I am Chief of Medicine, George Washington University Hospital, and Chairman of the Department of Medicine for the School of Medicine.

Q. Could you briefly tell us what your duties and responsibilities are in that position? A. I am in charge of the instruction in medical education for the Department of Medicine as opposed to surgery or other special areas for medical students, and I am also in charge of [962] medical care for patients, that is, in supervising medical care for patients on the medical services at George Washington University Hospital.

Q. Do you treat patients in the course of your present duties? A. Yes, I do.

* * *

[966] Q. Now, when you say that there is a psychological component do you mean the psychological factor helps to cause the disease? A. It could, and just the other way around, the disease can cause a psychological. They are both interrelated. There are factors on both sides. Incidentally, the psychiatrist has to know both too if he deals with psycho-somatic medicine.

Q. Are there illnesses or diseases in which doctors generally do not consider psychological factors as being a cause? A. Well, in many diseases — infectious diseases, for example, pneumonia where germ is the cause, where the psychological is a small measure contributory, certainly not causative in that sense.

Q. Would cancer be such a disease as to which the psychological is not the causative in the sense? A. No one in my knowledge has ever shown cancer can be produced by psychological factors.

* * *

[968] Q. Doctor, I would like to mention another number of diseases and ask you whether they fall into

the category you have been describing, namely, they are not usually considered to be or caused by psychological or emotional factors —

MR. MADDEN: May it please the Court, his original question to the doctor was not are they usually, it was on the question of cancer, are they caused by, now it is changed, are they usually.

THE COURT: Suppose you rephrase it.

MR. DODELL: I'll accept counsel's suggestion, are they caused by psychological or emotional factors. Is tuberculosis such a disease?

A. No. It is not caused by emotional psychological factors.

Q. Parkinson's disease? A. No.

Q. Poliomyelitis? A. No.

Q. Heart disease? A. No.

Q. Liver diseases? A. No.

[969] Q. Dr. Brown, such diseases as you mentioned which are not caused by psychological or emotional factors, how are they treated? A. Well, in a broad way the ones you mentioned are treated either specifically as tuberculosis is treated, specifically with certain chemicals, and specifically if you include diet and rest, etc., as specific regimens, and some are treated symptomatically. Some form of liver diseases, no specific treatment, but is a general treatment of proper rest, proper nutrition, but they are all treated medically.

Q. Can those diseases be treated by solely by attention to emotional composition of the patient? A. Well, they can be tried to be treated that way, but it wouldn't be proper.

Q. Now, I think you indicated that there are diseases that have emotional or psychological components. Could you give examples of these diseases that fall into that category? A. Well, one is undulant fever, and to explain that a little further, it is a disease due to bacterial infection which is carried by, I think, most of us have heard of this, raw, unpasteurized milk from cows. It is carried in cows primarily. Swine also, uncooked pork could carry it. This parti-

cular germ, peculiarly enough does cause psychologic features. Yet, if it is treated as a psychologic disease or disorder, won't be cured. [970] The patient may be very nervous and depressed and look very well. One take temperature recordings, particularly at night and finds slight rises in temperature. Night sweats are common, etc., but a lot of these patients are treated psychologically because it is not realized they have this underlying infection but they won't get well unless you treat the infectious components. It is hard to diagnose. So that is a group of diseases that is mistaken to be purely psychological or emotional for many years.

Dr. Spink (phonetic spelling) in Minnesota, who is an expert in this has come up with many important points how essential it is to treat this with certain antibiotics, and interestingly enough, all the mental abnormalities disappear.

There are diseases of the pancreas, which is an organ which has to do with diabetes, and diabetes is an abnormality of the pancreas. There are other things pancreas does that are very important, but certain cancers, tumors, or growths or chronic inflammation of the pancreas, curiously enough, have mental components. A patient may present himself to the internist or psychiatrist as a mental problem primarily on this, very easily upset emotionally, depressed, and so on, but his trouble really is inspired from an organic reason. Those are two examples. There are many others. ***

* * *

[972] Q. Are there also, doctor, diseases in which psychological or emotional factors do provide the cause? A. Provide part of the cause and certainly we are familiar with two of those: everybody in this room is — peptic ulcer or ulcer of the stomach where people under great stress seem to develop this more than others. And another one is high blood pressure, but the current view by most knowledgeable people in these fields is that there is an organic physical reason that exists in the first place and then the

emotion — may I use the term "kicks it off" — activates it. There are many people probably potential hypertensives likely to get hypertension or high blood pressure are likely to have an ulcer, but never do because they never get under the particular stress or condition that inspires this. Why they don't these days, I'll never know.

* * *

[973] Q. Let's say an emotional factor kicks off a peptic ulcer, how is that peptic ulcer generally treated? A. Once it is kicked off, an ulcer is demonstrated, then it is treated medically and in part emotionally. But if you treat it just emotionally you won't get too far, it may perforate and you know what that means — leaks into the abdominal cavity and it has to be treated with proper dietary measures because once an ulcer develops, the hydrochloric acid in the stomach irritates it to a degree it simply won't heal, so you have to use materials that neutralize the hydrochloric acid and one of the best ways to do it is with diet — high protein diet — and the second is medical. Then you try at the same time to calm down psychological problems so hydrochloric acid won't be over-produced because psychological derangements cause hydrochloric acid. So it is kind of a problem really.

[974] Q. Are you aware of any evidence that successful cures of peptic ulcers have been brought about solely by address to the emotional development of the patient? A. Well, there are people without any real formal treatment get over their ulcers. They must, because we see a certain number of healed ulcers by x-ray and nobody ever knew they had it, and so in that sense maybe they had some kind of psychologic help that inspired a little bit of healing, but I think it is possible. You just take one component of care, the psychologic, and we have helped some, but I don't think from any standard medical approach today, acceptable approach, one would approach the problem solely psychologically. I think it would be very risky and very dangerous.

Q. In the case of these illnesses that have a psychological causative element, would you say generally they are treated by address to the emotional or generally treated by address to the medical component?

A. They are best treated by general address to the medical first and in fact rheumatic diseases, which I worked on for 30 years, have a large psychological component and if you treat those psychologically and not medically you can often make them very much worse because the depression that is noted in this [975] group of diseases, if it is thought of to be entirely a patient's fault and not part of the disease pattern, itself, the patient feels doubly guilty when he shouldn't because he can't control that fact until the disease itself is controlled and we found by experience although there is a large psychological component, it is far better to treat the patient medically than it is necessary to have psychiatric help in addition. You don't do that because you can worsen the problem by inferring the psychologic is responsible for an organic disease basically.

Q. Which of the categories of disease that you discussed would you fit arthritis, Dr. Brown? A. It is "organic" or physical defect primarily. We now have data, perhaps you are seeing reports in the newspapers that things we have been working on that it is produced by virus or bacterial allergy, bacterial material, has come before us as primary reasons for development of arthritis, which gives all the more reason for looking upon it as primary physical ailment.

These are areas, incidentally, that have been debated considerably and there are people that think the psychological really causes arthritis, but that is waning very much now and the relationship is thought of exactly as I tried to indicate in peptic ulcer, a secondary factor but not primary factor today.

[976] Q. How is arthritis treated? A. Well, here again, it is very difficult to say in a few moments because each patient is different and there are hundred different variances of arthritis, but pri-

marily it is treated by drugs that reduce inflammation in these painful areas, some of them just break down through age, but if there is inflammation there you have to have some way to control that and there are many, many ways to approach that. I don't think I should get into that too much, but there are lots of drugs to be employed. There are physical means like phsiotherapy that are very important; dietary means such as high protein in-take which has a lot to do with healing of the areas, but every patient has to be treated, but primarily from a medical standpoint and sometime orthopedic help has to be given with braces and things of that sort, and sometimes you should exercise an area of inflammation and sometimes you should rest — it depends on what the state is. It is very important to time these things correctly.

* * *

[977] MR. DODELL: What is the percentage of illnesses in which psychological or emotional factors play a part in the cause?

THE COURT: I don't know if the doctor could answer.

THE WITNESS: I thought I kind of covered this total view where the psychologic fits into the total picture. Personally, I think it is terribly important. I think doctors of the future are going to have to look at the whole patient again and if he has got to know more about the psychologic, but it is awful to dissect out any particular factor. To take psychologic alone is just as bad as to take organic alone. You have got to look at the whole patient.

When I treat a patient with penumonia I am concerned what their reaction is with the pneumonia what they are worried about at home, are the children looked after. I think this is important. If you really got down to facts I'd say a hundred percent of people have an emotional component, it is not going to cure it to treat that out of context with the whole patient. You simply have to treat the medical, the kind of thing I am talking about, is the key thing, the medical.

I don't know if I answered your question completely or not.

[978] Q. I was simply trying to ask, Dr. Brown, whether some estimate could be given of the number of specific diseases which can be said to have a causal element, have as a causal element —

MR. MADDEN: Your Honor, I have no objection to this question at all.

THE COURT: All right, let's proceed.

THE WITNESS: Well, causal in a sense may activate the disease anywhere, is that the question? I have tried to explain a peptic ulcer, ulcer of the stomach was an organic or physical ailment in my opinion and opinion, I think, of a majority of the medical profession, but it can be activated, it can be inspired, it can be set into motion, it can become symptomatic by undue mental stresses. It also can be set in motion by seasonal change, interestingly enough — spring, fall and mid-winter at times peoples ulcers flare up regardless of background, which gives additional data to the substance of the disease being primarily organic.

I just don't think I can enlarge on your question.

Q. Thank you. I'll rest with your answer as to that question.

Have you heard, Dr. Brown, of instruments that measure skin resistance?

* * *

Q. [979] Now, are you aware of any use of instruments that measure or reflect changes in skin resistance in treating or curing skin diseases? A. I am aware of the instrument you introduced me to here. I wasn't up to that point.

Q. Let me clarify that: in medicine? A. The acceptable medicine in its usual form, the use of skin resistance to diagnose to treat diseases is certainly not a feature of acceptable medicine that I am familiar with.

* * *

[980] Q. Does that instrument as so demonstrated have any use, in your opinion, Dr. Brown, in treating

or curing diseases? A. It is no use, in my opinion, of treating or curing disease.

Q. Any use in diagnosing disease? A. It has no use in diagnosing disease.

* * *

[1022]

LEON YOCHELSON

was called as a witness for the Government, and after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DODELL:

* * *

Q. And what is your position at the present time?

A. Presently I am professor and Chairman of the Department of Psychiatry at the George Washington University School of Medicine and Chief of the Psychiatric Department at the [1023] George Washington University Hospital. Other duties involve being an attending physician at the D.C. General Hospital. I am an honorary consultant at the Sibley Memorial Hospital and senior psychiatrist at the Psychiatric Institute of Washington, D.C.

* * *

[1024] Q. Doctor Yochelson, are there diseases which are caused by emotional or psychological factors? A. Yes, sir, there are.

Q. And what are examples of such diseases? A. Certain of the neuroses, for example, hysteria, anxiety reactions, reactive depressions, can be due to emotional conflicts.

Q. And are there —

THE COURT: What do you mean by an anxiety reaction?

[1025] THE WITNESS: An anxiety reaction, Your Honor, is a state of affairs wherein an individual experiences either or both on a physical basis, symptoms of palpitations, breathlessness, excessive perspiration, sometimes, irregular breathing combined with a sense of great fear, often impending doom.

This kind of state of affairs, I might add, must be carefully distinguished from very important and potentially serious physical ailments such as angina pectoris and coronary occlusion. The symptoms on the one hand of the anxiety state and on the other hand of heart trouble may at first glance appear to be almost identical and only careful examination may at times distinguish the one from the other.

THE COURT: All right.

BY MR. DODDELL:

Q. And are there diseases that are not caused by psychological or emotional factors? A. Yes, sir, there are.

Q. What are examples of such diseases? A. There are certain infections, sir. Are you speaking in general or specifically with reference to the central nervous system?

As far as examples are concerned, in the nervous [1026] systems there are infections which have nothing to do with emotional states. For example, certain bacteria may cause conditions, of infections like tuberculosis of the brain. Certain viruses can cause inflammation of the brain substance itself and or of the tissues surrounding the brain. Certain direct blows to the head may cause conditions unrelated to emotional conflict. There can be other organisms than the viruses themselves that I have mentioned that can cause disease.

For example, syphilis of the central nervous system may cause symptoms at times superficially resembling emotional symptoms. One could treat syphilis of the nervous system with non-medical means until doomsday with no result except a progressive deterioration of the patient's health.

There are conditions of the blood vessels themselves such as hardening and thickening of the blood vessels, which state of affairs are unrelated to emotional conflicts.

Q. Are there other physical illnesses that are unrelated to emotional or psychological factors? A. Yes, sir. I would consider an inflammation of the

appendix known as appendicitis to be unrelated to emotional conflicts.

A. And may I ask you, Dr. Yochelson, is poliomyelitis — [1027] excuse me. Is poliomyelitis caused by emotional and psychological factors?

A. No, sir, it is not.

* * *

Q. Dr. Yochelson, I will refer to two or three additional illnesses and I would like you to indicate whether or not these are caused by emotional or psychological factors: Cancer? A. This is unrelated to emotional conflict.

Q. Parkinson's disease? A. Unrelated to emotional problems.

Q. And the common cold? A. The common cold is caused by viruses unrelated to emotional conflict. When it comes to conditions like the common cold we should realize that when one is tense and upset one may not take care of oneself very well, his resistance may lower, and therefore he catches cold, but the cold is due to a viral infection and not due to emotional conflict itself.

Q. In the case of such diseases as you have mentioned, does attention to the emotional make-up of the patient play [1028] a part in the cure of those diseases? A. The attention to the emotional make-up, sir, is not responsible for the cure, except insofar as a trust in the treating person may help the patient cooperate more with his treatment, taking medications and so forth. If I might give you an example, sir: Take an individual who has a condition known as sugar diabetes. One cannot cure this condition by psychological means. On the other hand, the individual with diabetes may have certain emotional problems which, without his understanding it, prevent him from taking good care of himself; from following the orders his physician has given him, such as what foods to eat, what foods not to eat, how much insulin he should take, and the like.

I believe that all treatment situations need a human touch, if I can use that expression, but it is not the human touch which is curative.

Q. Now, there are — I believe I asked this, but I'd like to have examples of illnesses that are caused wholly or in part by emotional or psychological problems. A. Yes, sir. Certain of the lesser psychiatric syndromes known as neuroses.

Certain of the lesser psychiatric syndromes known as [1029] neuroses, such as hysteria, anxiety reactions, reactive depression, are caused largely by emotional conflicts.

Q. How are those illnesses treated, Dr. Yochelson? A. Prior to the onset of the treatment of any condition, there must be a very careful evaluation of the symptoms, and a complete examination, including history and whatever examination and laboratory procedures of the medical variety are indicated. I gave you an example earlier of an individual who may have symptoms of anxiety which at first glance may be indistinguishable from a serious heart ailment.

Prior to the introduction of any treatment program there must be careful evaluation as to the cause of the condition. Then, an appropriate treatment program can be prescribed. There is no one single treatment program that is applicable to all human conditions.

Q. In the case of what you described as neuroses, is talking to the patient sometimes involved in the treatment? A. If I may say that talking with the patient, certain discussions may frankly be present, yes, sir.

Q. Now, can you explain in what way these discussions with the patient are used in treatment of such neuroses? A. Yes, sir. Prior to the determination of the treatment [1030] program, the very careful history must be taken. This history involves very minute study of the symptoms themselves, the time of their onset, the circumstances of their onset, and the effect of these symptoms upon the patient's own adaptation to his relationships, to his work or studies, as the case may be. These symptoms or neuroses do not occur in a vacuum. They affect the patient in one way or another, ranging from his sleep

habits, eating habits, to his relationships with colleagues and people at work. When this information is obtained, there then should be taken a careful extensive past history. The purpose of this is to give the physician an idea as to the strength of personality or as it is technically known, ego strength, that the individual has.

In other words, it must be determined to what extent the individual can withstand certain stresses and strains.

The reasons for this is not only to make the discussions with the patient more meaningful, but to, indeed, determine whether the patient is sufficiently strong to withstand a particular form of treatment. One does not helter-skelter prescribe a treatment to everyone when certain men may not be able to withstand the treatment itself.

When the past history is obtained, the physician can [1031] then discern certain behavior patterns of adaptation. This gives him clues as to the kind of circumstances the individual is prone to get into which in turn make his adaptation to life very difficult.

We know, for example, that some individuals quite unwittingly make their own lives more difficult by repeating old patterns which are not particularly helpful to their adaptations. As part of the total examination of a patient there should be a physical examination of the patient. Again stressing what I mentioned earlier. The presenting symptom of a particular patient may be similar to conditions both caused by damage to a heart, for example, and symptoms brought about by anxieties of one sort or another.

Now once all of this ground work has been done, then one can determine the kind of treatment that should be prescribed.

Let us assume that in a particular instance we are discussing now, that the diagnosis of neurosis of one sort or another is made. That there is some condition where we are not dealing with a disease of the body tissues, but rather some kind of an emotional problem of one sort or another.

* * *

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* * *

[1032] Once the total examination has been completed, then a treatment program can be more sensibly and more wisely decided.

For example, in a particular case, where we agree, what is primarily a difficulty is the person's emotional adjustment. Person A may need very extensive discussions to get at the root of this maladjustment. Person B, on the other hand, may suffer intensely these intense, significant discussions of personality and back down and his condition may become very much worse. There are certain people in whom it is distinctly against their best interests to do deep probing. They need other forms of psychotherapy. Perhaps supportive psychotherapy for example and encouragement. They may need primarily medicinal administration. Certain medications may be far better for certain people than discussions.

BY MR. DODDELL:

Q. Dr. Yochelson, in your judgment, can discussions [1033] such as you have indicated have value for the patient if they are conducted by a person without psychiatric training? A. I believe that the value is very limited.

I would say to start with, if the patient has not had the complete study that I have mentioned which includes medical study, then there is not only a question of little value but of possibly great damage.

Let us assume that the individual has had, the patient has had careful medical workup and the patient now goes to somebody non-medical. If this non-medical person is not specifically trained in the field of psychotherapy there can be great damage because the untrained person is most prone to use a single method or two. In a sense, forcing every patient to accommodate himself to a single solitary method of treatment. It's as though I tried to treat everybody's illnesses with insulin. The only person I would help are those with diabetes and I better make very sure I know how much insulin to give.

Similarly, psychotherapy is not one format of procedure. Psychotherapy varies. There are many forms of psychotherapy. In some patients intensive probing psychotherapy will make for greater anxieties. In other patients it may be very helpful.

[1034] Q. Dr. Yochelson, I believe you said neuroses can or do result from emotional or psychological problems. Do psychoses, is that true of psychoses? A. Certain of psychoses are due to emotional problems and certain of the psychoses are not. For example, if I may explain: There are a number of psychoses which are, about which I am referring to serious mental disorders, which have nothing much to do with emotional problems, and again we get into the area wherein what the patient may be complaining of at the first glance we may assume could be due either to some disturbance of his brain tissue or it could be due to some kind of emotional problem.

For example, there are some people who develop very serious depressions of their mood. So severe they don't want to live any more. Some of them attempt suicide. In some of these people there may indeed be emotional problems causing this severe degree of emotional depression. In other people there can be a certain kind of change going on within the brain substance itself, which only secondarily causes the person to be depressed. And you can treat a person like I have just described for 50 years if he doesn't kill himself first and nothing profitable will happen.

[1035] Again, I stress the terribly great importance of distinguishing what is the cause of the person's symptoms. If I had a headache, sir, my headache might be due to a brain tumor or it might be due because I am mad at somebody.

Now it seems to me that if you assume my headache is because I am mad at somebody when my headache is really due to a brain tumor, you are not helping me one bit by talking to me.

Q. In the category that you described, psychoses that is caused by a physical condition, is there some

method of treatment that might be appropriate? A. Yes, sir, for example, in the instance, let us say, of certain disturbances within the brain, such as brain tumor. There are certain surgical procedures which can relieve the situation. There are certain infections for which medications can be terribly helpful. These are examples where non-talking methods of treatment can be very effective. And where, if the treatment were restricted to talking, the patient would be lucky to survive.

* * *

[1036] Q. Dr. Yochelson, I show you Government Exhibit 77 and Government Exhibits 2A and B. These cans. And Government Exhibit 3, a wire, and I ask you whether you have ever seen an instrument like this instrument? A. Yes, I have.

Q. And have you seen that instrument connected with the wire in the input, and the clips attached to the cans? A. Yes, sir, I have.

Q. And have you seen the instrument demonstrated when it is so connected? A. Yes, sir, I have.

[1037] Q. And what is the instrument? What function does the instrument perform as so set up? A. This is an instrument known as a galvinometer, which measures the amount of electrical flow from the surface of the skin. This is done by actual measuring the resistance which an electric current must overcome in order to be measured on this. This instrument is as crude as the one I used over 30 years ago in doing research on the galvinometer.

Q. Why do you say it is crude, Dr. Yochelson? A. It is crude in that the electrodes which are these cans here are cumbersome, they make no allowance for a very cold pressure. In other words, any changes in pressure on these cans can change the reading on the dial of this instrument. This instrument in essence can measure only these changes in flow without giving any specific reason as to the cause for the changes.

In other words, the change could be due to the fact that I am afraid of something or I am mad at

somebody or I am squeezing the tin can or I have got a certain condition of my blood vessels which reduces or increases the output of perspiration. You see, it is the amount of perspiration from the skin that permits the change in the electrical resistance [1038] and therefore finally the change on the meter.

Q. And Dr. Yochelson, would this, or is this instrument in your judgment of any use in diagnosing the emotional or psychological problems of people?

A. No, sir, it is not.

Q. And is it of any use in the treatment or cure of the emotional or psychological problems of people? A. No, sir, it is not.

* * *

[1074] DR. WALTER LESTER HENRY, JR.

witness called for examination by the Government, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DODELL:

* * *

Q. Could you tell me your position at the present time? A. Chairman of the Department of Medicine, Howard University.

[1075] Q. Would you briefly tell us what your duties and responsibilities are in that position? A. Well, primarily teaching medical students of the first four years in Medicine as well as interns, residents, and taking care of patients in Freedman's Hospital.

Q. Do you personally treat patients? A. Yes.

* * *

[1076] Q. Dr. Henry, are there diseases that are not caused by psychological or emotional factors? A. Yes.

Q. Could you give examples of some of such diseases? A. Well, any of the infectious diseases such as for example, such as pneumococcal pneumonia — pneumonia caused by pneumococcus; diabetes mellitis, which is ordinary diabetes; gout, this is another metabolic disease. There are many others.

Q. Is cancer such a disease, Dr. Henry? A. Yes.

Q. And, is tuberculosis such a disease? A. Yes.

[1077] Q. Parkinson's Disease? A. Yes.

Q. Bursitis? A. Yes.

Q. Is the Common Cold a disease that is not caused by emotional or psychological factors? A. Yes, it is a virus disease.

Q. And, I'd like to ask you about two more: Myopia, is that the same type of disease that you have been describing? A. Yes.

Q. And, are blood disorders caused by psychological or emotional factors? A. No.

Q. Now, could you tell us, Dr. Henry, how such diseases as you have mentioned are treated? A. Well, the first thing to do is to take a complete history and to do a complete physical examination and then select laboratory studies after you have done these two things. They are designed to arrive at a precise diagnosis of the cause of the disease. Then of course one specifically treats the cause.

Q. And what type of treatment is applied to that cause in the case of diseases that we mentioned? [1078] A. Well, in practically all of the diseases that we mentioned an appropriate medicine could be selected. There are diseases, of course, where surgery may be needed.

For example, we just alluded to cancer. Sometimes this is treated with surgery.

Q. Can any of these diseases that we have mentioned be treated successfully treated, or cured, by addressing the emotional or psychological components of the patient? A. No.

Q. Are there diseases which do have psychological or emotional aspect? A. Yes.

Q. And, could you give examples, Dr. Henry, of diseases that fall into that category? A. Well, ordinary tension headache falls into this category, and certainly there are such elements in patients, with peptic ulcer, bronchial asthma, ulcerative colitis. There are others but perhaps those are enough.

Q. Would rheumatoid arthritis fall into that category? A. Rheumatoid arthritis usually has a psychosomatic component, yes.

Q. Are there other forms of arthritis that do or do not fall into this category? [1079] A. Yes. There are infectious arthritides, such as pneumococcal arthritis, gonococcal arthritis, tubercular arthritis. They are infection arthritides. Then there are metabolic arthritides such as gout, for example, and there are arthritides caused by specific diseases of the nervous system, specific organic diseases of the nervous system such as we see in diabetes and tertiary syphilis. Perhaps that is enough?

Q. Now, the cause of arthritis that you have enumerated other than rheumatoid arthritis — are they caused by emotional or psychological factors? A. No.

Q. Now, as to the diseases that you have indicated that are cause or that do have — excuse me, let me strike that. I'd like to rephrase the question. As to the diseases that you have indicated that do have psychological or emotional aspects how are those diseases treated? A. Well, one makes a complete diagnosis of these cases, and one pays attention not only to the physical cause of the disease but to the cause of the psychological cause, so the disease is treated in each instance by treating both the physical aspects of the disease and either — the physician in question may elect to treat the psychological [1080] aspect or he may refer the patient for that aspect of the disease, but the total patient would be treated.

Q. Are any of these diseases treated solely by reference to the emotional or psychological aspect? A. That would be very unwise. No.

Q. Dr. Henry, have you heard of instruments that measure skin resistance? A. Yes.

Q. Do such instruments have any use in the diagnosis of physical diseases? A. No.

Q. Do such instruments have any use in the treatment or cure of physical illness? A. No.

* * *

Q. Dr. Henry, I show you Government Exhibits 77 and Exhibits 2 A and B, and Exhibit 3, and let me ask you first, have you seen this instrument, Government Exhibit 77? A. Yes.

Q. And have you seen it connected with the wire attached to the input and the clips attached to those cans [1081] or cans like those? A. Yes.

Q. And have you seen it demonstrated when assembled in that fashion? A. Yes.

Q. And could you tell the ladies and gentlemen of the jury and the Court what function the instrument performed when it was assembled in that fashion?

A. Well, it acts as a simple volt — I shouldn't put it that way. It acts as an instrument designed to measure current. So, it is a galvanometer and indirectly it does this by measuring the skin resistance of the person holding onto the cans.

Q. And, in your judgment, is that instrument of any use in diagnosing physical illnesses? A. No.

Q. Is it of any use in treating or curing physical illness? A. No.

* * *

[1083] Q. And, what would be an example of such a disease? A. Well, tension headache is a good example of such a disease. This is not always true but some of the tension headaches are purely psychosomatic.

Q. Are there other diseases that are purely psychosomatic? A. Yes, we see patients, for example, who have gastrointestinal upsets for which we can find no cause other than psychosomatic cause. We find patients with persistent diarrhea stools, whose disease is apparently based entirely on psychosomatic factors.

* * *

Q. Dr. Henry, what name would you use to describe a disease in which there is an underlying physical cause but which is aggravated by psychological or emotional aspects? A. Well, I would simply call the disease by whatever its name was and indicate that there was a functional or psychosomatic com-

ponent. For example, a disease like peptic ulcer frequently has such a component to its cause but this is not the whole story.

[1084] Q. And, can such diseases be treated solely by address to the emotional or psychological — ?

A. No.

Q. (continuing) component? A. No.

Q. — and, what would be the consequence of attempting to cure such a disease solely by address to the psychological or emotional component? A. Well, if we stick to an example that the disease that I selected, I think that it is clear that the patient might get one of the complications of this disease and patients with a peptic ulcer who are improperly treated will not uncommonly hemorrhage severely or they may develop a perforation or they may obstruct. All of these are serious complications which may lead to death.

Q. Dr. Henry, is bronchial asthma a disease that would fall into this general category? A. Yes.

Q. And, can that be cured solely by recourse or by addressing the emotional or psychological component? A. No.

Q. And, what might be the consequence of attempting to cure bronchial asthma solely by addressing the psychological [1085] or emotional quality of the person? A. One of the consequences might simply be death. Because if the patient were allowed to be improperly treated and went into what we term continued asthmatic attacks, we call that status asthmaticus, and the result of this may be death. The other problem might simply be that if the patient were not treated the patient would develop obstructive emphysema, which means the patient would be a respiratory cripple.

Q. Dr. Henry, do you have an opinion as to the class of diseases in the category that I am dealing with now? In which there is an underlying physical cause which may be aggravated by an emotional factor? Now, as to that class of disease, would you say that generally they can be treated or cured by address

to the psychological and emotional factor alone? A. I would say no.

* * *

[1092] DR. RICHARD STEINBACH

was called as a witness for the Government and, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DODELL:

* * *

Q. And what position do you hold now? A. I am professor and Chairman of the Department of Psychiatry at Georgetown University Medical School.

Q. Could you briefly tell us what your duties and [1093] responsibilities are in that position? A. Well, in this position I am in charge of the psychiatric teaching in the Medical School which includes psychiatric courses in all four years of the medical curriculum. In addition, we have a large training program for residents, or doctors who are specializing in psychiatry and we run a training program of which I am the Director, for approximately 30 residents who are doing special training in psychiatry. Most of the directorate within the psychiatric service within Georgetown University Hospital.

Q. Do you treat patients yourself? A. Yes, in addition, I do treat patients.

* * *

[1094] Q. Dr. Steinbach, are there mentally — are there mental illnesses caused by emotional or psychological problems? A. Yes, there are.

Q. What are the kinds of mental illnesses that are caused by such factors? A. Well, there are a variety of mental illnesses caused [1095] by some purely psychological factors, others by psychological as well as other kinds of factors. But, generally, I would feel that most of the psychoneurosis or neuroses are caused by psychological factors. Many of the psychoses are caused by psychological factors,

some are, some aren't, depending upon the particular one. There are certain kinds of character and personality or behavior disorders which are caused by psychological factors.

Q. Now, of the conditions that you mentioned that are caused by psychological and emotional factors, how are such conditions treated? A. Well, they are treated in a variety of ways, depending on the particular individual. It would be determined not only by the particular clinical diagnoses, but by the assessment of the individual himself.

Treatment could range from various kinds of drug therapies, of which there are a variety of treatments within the framework of drug therapy. There are various kinds of so-called shock therapies such as electric shock therapy, and insulin shock therapy and treatments of this type, and many are treated by various kinds of psycho-therapy.

Q. Now, could you tell us how psycho-therapy is used to treat these conditions? [1096] A. Well, there are different levels and different kinds of psycho-therapy. One of the most important aspects of psychotherapy with almost any patient does relate to establishing a particular kind of relationship with the patient and understanding what is going on in the relationship between the patient and the doctor. In other words, one of the things that is particularly helpful to many patients is what psychiatrists refer to as a corrective emotional experience, which is a situation in which the relationship that the psychiatrist establishes with the patient differs significantly with the relationship that this individual has had with other people in his life, in other words, a psychiatrist tries to establish a relationship in which he can correct some of the problems and difficulties that this individual has developed with other significant people during his life, so that during the treatment of an individual, a psychiatrist must be very much aware of what kind of relationship exists, and frequently the treatment involves the whole area of how the patient is relating to the doctor and what kind of distortion

he is making in the relationship so that frequently the psychiatrist has to clarify for the individual certain distortions that he is making about what is going on; so that this particular part of psycho-therapy which is extremely important has to do with the relationship [1097] that is established, the psychiatrist being able to understand it fully and the patient coming to understand something about the relationship.

With some patients, insight or understanding of their emotional problems is an important part of treatment. This varies depending on the kind of problem that exists. Some people in order to get better must again — must gain some further knowledge or understanding of themselves which they couldn't have before. Other patients do not need this kind of insight in order to get that.

Q. Does the formation of this relationship that you described, and the selection of the approach that you have also mentioned, depend on any special training? A. Yes, it requires extensive training to learn one, the kind of approach the doctor should establish with different kinds of people, because, depending on what the clinical diagnosis is, the doctor's approach will vary considerably with one type of patient. The doctor might have to be very supportive with another kind of patient. He would have to be perhaps more firm or authoritative so that one of the basic skills that has to be learned over a period of time is one, to make a clinical diagnosis so that you know exactly what is wrong with the person and how sick he is. And from there requires a [1098] tremendous amount of experience and supervision of one's training to learn when to intervene, when not to intervene, what to say, what not to say, and to learn which patients need insight, which patients don't need insight, which patients need, say, primarily support, which patients need something else from the relationship.

Q. In your judgment, could a person without psychiatric training form such a relationship with a patient and make a sound selection of the approach along the lines that you have indicated? A. Well, I think

there are some kinds of problems that can be treated by skilled professionals from disciplines other than medicine, but certainly, the major psychiatric illnesses, or people who have a truly psychiatric illness, I feel should be treated by a psychiatrist, because he is the individual who has the appropriate and proper training and skills developed.

Q. Would a person without some psychiatric training be in a position to decide whether there is a psychiatric illness, or whether there is some lesser problem? A. No, I don't feel that a person would be able to.

MR. MADDEN: Your Honor, in passing, I would like to object. There is no foundation in the evidence for that sort of question.

[1099] THE COURT: I'll overrule the objection.
BY MR. DODELL:

Q. Dr. Steinbach, what factors do you rely upon in making a clinical diagnosis of a patient? A. The most important diagnostic tool would be the clinical interview, or interviews that the psychiatrist would have with the patient. At times, as in other aspects of medicine, we use other kinds of procedures to help us to make a diagnosis, but I see the clinical, or series of interviews, as a primary diagnostic tool.

Q. Now, Dr. Steinbach, you indicated that there are some mental illnesses that are caused by other than emotional or psychological factors. Could you indicate what might be samples of those? A. Well, in particular there is a large category of illnesses referred to as organic and brain syndromes. These would be illnesses in which an individual presents with psychiatric or emotional symptoms, but the basic illness that the individual has is some kind of disease of the brain. Examples of this would be such diseases as brain tumors, or hardening of the arteries in the brain, or syphilis, or other kinds of infections of the brain. There are many such illnesses as this where the person may present to the physician with what [1100] appeared to be psychiatric symptoms, but one must by careful evaluation determine the real

illnesses — the real illness is the organic brain illness that is going on.

Q. And how would such condition be treated? A. Well, this would vary, depending on what the specific disease was in the brain. It would vary from penicillin therapy in the case of syphilis of the brain, or other kinds of infections, to surgery if a brain tumor was the cause of the problem. But would usually be in the range of some kind of physical or medical procedure or treatment.

THE COURT: Excuse me, doctor, a question: If a person you diagnosed the condition in is organic brain syndrome, could that be congenital? Of course, for the jury's benefit, something the person might be born with.

THE WITNESS: In some instances, yes, other times a person developed it during his lifetime.

BY MR. DODELL:

Q. Are there physical illnesses that have a psychological or emotional component? A. Yes, there are.

Q. What would an example or examples of such illnesses be? A. Well, I think it is a bad procedure to categorize, [1101] really, any particular illness as always having psychological components or as always not having them, but we can take illnesses, particularly such as stomach ulcers or ulcers of the intestine, or illnesses such as colitis, illness such as asthma, and say that in many instances these particular illnesses do have psychological components. But we have to assess each individual to be certain of this, but ulcers, colitis, asthma, migraine headaches, these are illnesses that frequently have a psychological component to them.

Q. And how are such illnesses treated? A. Again, this varies with the particular individual and in most instances, take a person with a peptic stomach ulcer, in most instances the treatment would be primarily medical, with the doctor having some understanding of the person and what he is like, and what his feelings are, so that the doctor can take the most bene-

ficial kind of attitude toward the patient in his treatment and perhaps modify certain parts of the medical treatment, depending on the person's psychological need, but the bulk of such patients are treated really with a combined medical and psychological approach with the medical treatment being a very important part of the treatment.

There are some instances in which people with this kind of illness would be referred for some kind of formal psychiatric treatment by a psychiatrist, in addition to the [1102] medical treatment. But this is not the usual procedure.

Q. Are you familiar with instruments that measure skin resistance? A. Yes, I am.

Q. Is there any use that you know of for such instruments in the diagnosis, treatment or cure of mental illness? A. No.

* * *

Q. Dr. Steinbach, I am showing you an instrument, a wire and two cans, that are Government's exhibit in this case. Have you ever seen that instrument that is before you before? A. Yes, I have.

A. And have you seen it with the wires connected to it and the cans attached to the clips at the ends of the wires? A. Yes, I have.

Q. Now, as so assembled, could you form an opinion as to what the function of that instrument was? A. Yes. Primarily to test skin resistance.

Q. In your judgment, does that instrument have any use in the diagnosis, treatment, or cure of mental illness? A. No.

[1103] Q. Dr. Steinbach, how would you define the term psychosomatic illness? A. Well, the usual definition of psychosomatic illness is that this is a physical organic illness which an individual has, but one in which psychological factors play a role, either in the development of the physical illness, or in the perpetuation of the physical illness, or both. This is the usual definition of the term psychosomatic illness.

In the broadest sense, however, usually we include within this category physical illnesses in which there is no organic disease. For example, an individual may present symptoms of backache or back pain and there would be actually no organic disease there, but we would still tend to call that a psychosomatic illness, because it is a physical symptom related to or caused by psychological factors.

Q. Addressing myself, Doctor, to the first category that you gave, namely, a physical organic illness in which psychological or emotional conditions play a part, either in cause or perpetuation, do you have a judgment as to whether such illnesses can ordinarily be treated, or cured solely by addressing the emotional or psychological components of the patient?

A. Only in rare instances, or certainly in a very small percentage of cases.

* * *

[1127] Q. Dr. Steinbach, could you tell us, please, whether the instrument that was before you with the wire and the two cans could have any use in reading or measuring the basal metabolism of a human being?

A. No.

Q. And could you tell us, Doctor — I should have said, would it have been any use. Doctor, I asked, could you tell us, and the answer was no. Could I restate the question, Your Honor.

[1128] Does the machine have any use in reading or measuring the basal metabolism of a human being? A. No, it would not.

Q. And does that machine have any use in improving the intelligence quotient of a human being? A. No.

* * *

[1147]

MAURICE KINSLOW

witness called by the Claimants out of the presence of the Jury, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MADDEN:

* * *

[1152] Q. All right. Will you read the question you were asked and the answer? A. Yes.

Question No. 1 was — Any agent or employee of FDA ever enrolled — as a student or for 'processing' by the Church of Scientology or its affiliated organization, including an individual named Taylor Quinn? Answer: Yes, Mr. Quinn was sent to enroll as any other citizen would enroll. He was to determine whether this organization was offering articles in violation of the Federal Food Drug and Cosmetic Act.

Q. So that he was sent there from 1958 to enroll without divulging that he was a Food and Drug Administration man, to make a determination under the law, is that correct? A. Mr. Quinn was sent to enroll as any other citizen would enroll.

* * *

[1158] TAYLOR M. QUINN

witness called by the Claimants out of the presence of the jury, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MADDEN:

Q. What is your name and address and present occupation, please? A. My name is Taylor M. Quinn. My address is 6623 Mowley Drive, Falls Church, Virginia, and I am a Food and Drug Officer with the Food and Drug Administration.

Q. What is your present capacity there? A. I am assistant to the Director of the Division, Case Guidance.

* * *

Q. [1160] Now, sir, did there come a time that you enrolled or visited or were sent to the Founding Church of Scientology? A. Yes, sir, I visited them.

Q. Well, is it not correct you were sent there?

A. Yes, sir.

Q. You were sent. And by what order were you sent? A. I believe my District Director told me to visit the place and inquire about it as a citizen, as a casual citizen and find out what they had to say.

Q. He said visit it and inquire about it as a casual citizen. And what was his name? A. Richard Williams.

Q. Did you get any written orders? A. I don't believe so.

Q. And, as a result of that order, what did you do? A. I visited 1812 I believe was the address, 1812 — I don't remember what street it was now up in Northwest Washington. They have several buildings up there. I first visited it on — you want the date?

[1161] Q. Yes, please. A. I believe it was March 15.

THE COURT: What year?

THE WITNESS: 1959.

BY MR. MADDEN:

Q. Please tell us what occurred during that visit?

A. Well, it was at night. About 7:30 I think, and I went in the door to the building with several other people and it was fairly small meeting hall as I remember. It looked like a house from the outside but in the inside it looked like a fairly small meeting hall. I sat down and 30 or 40 other people came in and sat down. An elderly gentleman showed us a film. In the middle of the film he took up a collection for a building fund I think and then he finished the film, made some remarks about Scientology, and showed us a few simple mathematical tricks. And said the meeting was over.

Q. What did you say to anyone during that first visit? A. Well, there was a gentleman there in the audience, I believe his name was Mason, who I told I was interested in Scientology, and he — we talked about it for a while and then he introduced me to this elderly gentleman whose name I believe was Eliot.

Q. Did you tell him that you were interested in

[1162] Scientology? A. Yes, I did.

Q. Were you interested in Scientology? A. Yes, sir.

Q. Did you tell him that you were Food and Drug Administration employee? A. No, sir.

Q. What day of the week was this? A. Sunday night.

Q. It was the Sunday Night Service, was it not?

A. Well, it was a Sunday night meeting.

Q. Sunday Night Meeting. And did you have, did you tell anyone else anything or do anything else that evening of significance? A. I don't believe I talked to anyone except this Mr. Mason. Mr. Eliot and I had some more conversation with Eliot about my interest in Scientology.

Q. Did you purchase any of the literature that night? A. Yes, I purchased a book and he gave me some free literature.

Q. Which book did you purchase? A. I don't remember which one it was now.

Q. Well, was it a full-sized book? [1163] A. No, it was a pamphlet.

Q. Do you recall whether you got reimbursed from the Food and Drug Administration for that purchase? A. Yes, I got reimbursed.

Q. You did. You were on official duty that night, weren't you? A. Yes, sir.

Q. Now, did you subsequently visit the Founding Church of Scientology? A. Yes. During the conversation, Mr. Eliot suggested that I come back and talk to him later, which I did.

Q. What did you say to him the next time? A. I told him I was interested in learning more about the Scientology and he suggested several courses, one of which I agreed to.

Q. Now, did you at that time, have a church affiliation of your own? A. Yes, sir.

Q. What church? A. Baptist.

Q. Which one? A. No. At that time, I don't think I had moved my membership up from New Orleans but I just gotten here. I was a Baptist but I doubt that I had joined the Baptist Church in [1164] this area.

Q. But you moved from there to here? A. About that time. It may have been I am not sure.

Q. Are you still in that church? A. I am still a Baptist, yes.

Q. Now, sir, he asked you which facet or phase of the Scientological movement you were interested in, is that correct? A. No, I told him I was interested and he suggested I could take a correspondence course at night or I could take a course in the daytime.

Q. What did you understand him to mean by course? A. He said the course would teach me more about Scientology. That is about all I remember.

Q. Did he say — Did you say anything else during that visit? A. Oh undoubtedly we talked about the price of it. How much time it was going to take, and so forth, but I don't remember exactly what.

Q. During that second visit, did you buy any literature? A. I don't believe so. It is possible but I don't think so.

Q. During that visit, did you tell him or anyone else on [1165] the premises that you were a Food and Drug Administration Resident Inspector? A. No, sir.

Q. Did there come a time when you made a subsequent visit there? A. Yes, Dr. Eliot suggested that I come. Doctor Eliot or Mr. Eliot, whichever it is. Took me to see a young lady at that time, and I think I signed up for the course then, or if I didn't signed up on the next visit a couple of days later. This was — I made both visits one on a Wednesday and one on a Friday, and I am not sure whether I signed up for the course on the Wednesday visit or on the Friday visit.

Q. And, what course did you sign up for? A. I believe it was called apprentice Scientologist.

Q. Apprentice Scientologist? A. I think that is right.

Q. Do you recall what the cost was? A. \$50.00.

Q. Do you recall whether you got reimbursed for the course from the Government? A. Yes, I did.

Q. Now, you recall that you might have signed up for the course either that visit or one shortly after that? [1166] A. Yes.

Q. What was the nature of — first of all, did you read what you signed? A. I think so. It seems to me there was a contract in it and I am not sure I read every word of the contract.

Q. You usually read what you sign though don't you? A. If I have time.

* * *

Q. I show you a two-page document entitled Exhibit 12, Exhibit 12-A, and ask you if you are familiar with these documents and if that is your signature on both of them? A. Looks like my signature all right. Both of them. It is vaguely familiar — the document. I wouldn't guarantee it is the same one I signed.

Q. You do recall signing some documents? A. Yes.

[1167] Q. Were you under any coercion or in the middle of any processing or anything at the time you signed these? A. In — other than they told me I had to sign if I wanted to take the course.

Q. And you told them you did want to take the course and you signed? A. Yes.

Q. And they told you you had to sign these if you wanted to take the course — A. That is right.

Q. And they handed them to you and you read them and you signed them, is that not correct? A. That is true. If those are the documents, I read the ones I signed.

Q. Well, look at them again, Mr. Quinn, and tell me whether you have any doubt but what that is your signature. A. It looks like my signature but it is easy enough to trace a signature. I wouldn't swear to anything of that kind, it certainly looks like my signature.

* * *

[1171] Q. Mr. Quinn, let me go back a moment and ask you when you first came into the Church and first had reason to get to the subject, who did you say

you were, what job did you say you have, and where did you say you lived? A. I said I worked for the Department of Defense and said I lived in Arlington, Virginia.

Q. Where did you live? A. Falls, Church, Virginia.

[1172] Q. Now, going to where your testimony ended before lunch, at the time of the second or third visit, where you signed these contracts that have been put in evidence as Government's Exhibits — I mean Claimant's Exhibits 12 and 12A, did anyone at the Founding Church of Scientology know who in fact you were? A. They knew what my name was.

Q. Did they know you were a Food & Drug man? A. Not as far as I know.

Q. You had no reason to think they did know that? A. No.

Q. Were the answers that you gave on these forms, the inquiries about whether you had earlier had any particular physical diseases, in fact true? A. Could I see it?

Q. Yes. I am showing you now 12A. (Hands to witness.) A. Just the top one?

Q. No, sir, the back of 12A. A. I believe they are all true.

* * *

[1173] A. Well, I believe we were on the second or third visit, any rate, I came back the second visit and went through part of what the course was about and they told me to come back again on Friday to take a series of tests and I came back on Friday and took the test and I believe I paid the money then and perhaps signed the contracts. Then — either then or Wednesday, and had some conversations with several people — a couple young ladies that I remember, then I was told to come back the following Monday. You want me to go on?

Q. Did you during that visit purchase any additional literature or documents? A. I am not sure whether I purchased then or the beginning of the next week. I believe it was the beginning of the next week.

Q. All right, sir. Would you go on the beginning of the next week? A. I came back on Monday and they told me it would be 9:00 to 5:30 each day except Saturday. I came back at 9:00 o'clock on Monday and went in one of the buildings and was directed to Mr. Fudge, I believe, and he directed me to another room in one of the buildings and had me meet a Mr. Townsend, I believe, and Mr. Townsend introduced me to three or four other people and said that was going to be the class for the course that I had [1174] signed up for and I proceeded to take the course. At Mr. Townsend's suggestion, I believe, I bought two more small pamphlets or books of some kind.

Q. Now, sir, after your first visit did you make some notes or memorandum or report to your office? A. Yes, sir.

Q. Did you after your second visit? A. Yes, sir.

Q. And did you after your third visit? A. Yes, sir.

Q. You did in fact after each visit, is that correct? A. Yes, sir.

Q. Now, did you then take a course? A. Yes, sir.

Q. And what again was the name of the course?

A. I believe it was Apprentice Scientologist or something along that line.

Q. How long did that take? A. Supposed to last two weeks, but I only went five days.

Q. Why was that? A. My superiors decided they had other things for me to do.

* * *

[1176] Q. Was your family with you at that time in Falls Church? A. Yes.

Q. Do you recall saying that you had to leave the city on an emergency basis because of illness? A. I don't remember, no, sir. I just don't remember. I don't know whether I did or not.

Q. But you could have made up some excuse like that? A. I could have.

Q. Now, do you recall purchasing any other books or pamphlets? A. Seems to me at a later date I purchased another book, I don't remember exactly when

but I have some vague memory of purchasing another book at a later date.

Q. And you took a number of tests, did you not?

A. The Friday before I started the course, yes.

Q. Did you take these in good faith? I mean did you try to do them as well as you could, these personality tests? A. Yes.

MR. MADDEN: I would like these marked, please — the American Personality Analysis as the next exhibit.

DEPUTY CLERK: Claimant's Exhibit No. 18 for identification.

[1177] MR. MADDEN: The California Capacity questionnaire.

DEPUTY CLERK: Claimant's Exhibit No. 19 for identification.

MR. MADDEN: And 12 other sheets of tests.

DEPUTY CLERK: Claimant's Exhibit No. 20 marked for identification.

(Claimant's Exhibit Nos. 18, 19, and 20 were marked for Identification.)

BY MR. MADDEN:

Q. Now Mr. Quinn, I hand you Exhibits 18, 19, and 20 for Identification and ask you if those are the tests that you took and your markings on those papers? A. Well the printing on the first two looks like my printing although the third one doesn't.

Q. What is the number on that, sir? A. 18.

Q. Well, that is not a test signed by anyone, is it? A. No, but the printing on here looks like I might have printed my name on it. I wouldn't be sure these are the ones I took, but looks familiar.

Q. Do you recall taking tests of that nature? A. I recall taking tests but don't remember just exactly what they are or what they were.

[1178] Q. Now Mr. Quinn, I want to show you some receipts for documents — some receipts, and ask you to identify them for me, please.

THE COURT: Now what is the purpose of all this?

MR. MADDEN: To show he bought some literature there.

THE COURT: Is there any contention he didn't?

MR. HANNON: Not at all, Your Honor.

MR. MADDEN: Your Honor, we want to trace through the fruit of this poisonous tree.

THE COURT: What poisonous tree are you talking about?

MR. MADDEN: Undercover agent in the church.

MR. HANNON: What undercover agent?

THE COURT: You mean to say this man was told to go there, he went there for a purpose apparently. Now, I am trying to find out what you are trying to develop here.

MR. MADDEN: Your Honor, may I refer to our Motion to Suppress and the Law of the Supreme Court in seizure cases?

THE COURT: Of this type of case?

MR. MADDEN: Forfeiture cases.

THE COURT: What did the Supreme Court say?

[1179] MR. MADDEN: Saying that a federal agent cannot participate — saying the government may not make an entry by means of false representation, search as fully as possible without arousing suspicion and later make the fruit of that entry and search basis of what otherwise might be legal search and seizure.

I submit putting an undercover agent in, if it is in fact —

THE COURT: Let me have the name of the case.

MR. MADDEN: Boyd v U.S. 116 U.S. 616.

THE COURT: That a criminal case?

MR. MADDEN: That one is. Then One Plymouth Sedan, 697 and 698, and that is a forfeiture case.

THE COURT: What volume?

MR. MADDEN: I'm sorry —

MR. HANNON: 380 and 693.

THE COURT: All right. Are you familiar with the case?

MR. MADDEN: In Boyd they held the Fourth Amendment did apply to a forfeiture case because although it may be civil in form they are in their nature criminal. Then the question of whether any-

thing wrong with putting an undercover agent in is in the case of the Fraternal Order of Eagles — they are all federal cases. I have a number of them, Your Honor, in the section in my Motion to Suppress. They arise in the context of the fruit of the poisonous tree.

[1180] THE COURT: What is the citation of the Boyd case?

MR. MADDEN: 227 F2d 603, and the 57 F2d 94. And I refer Your Honor to the memo I filed here on the motion to suppress. That goes to that question.

THE COURT: Mr. Valder, will you get these cases?

MR. HANNON: Your Honor, would you hear from Mr. Dodelle before you send your law clerk for them because I think you may have to send only for one case — maybe not even that.

THE COURT: Let's hear what he has.

MR. DODELL: Your Honor, subsequent to the decision in the One Plymouth Sedan case which is 380 U. S. cited by Mr. Madden, the Third Circuit decided a case called the U.S. vs 2000 Plastic Tubular Cases, more or less.

THE COURT: What is the citation?

MR. DODELL: That is 352 F2d 344. In that case the Court of Appeals for the Third Circuit raised the issue sua sponte whether the One Plymouth Sedan decision was applicable in any Food & Drug Administration seizure case, and the the Court said it was not. In doing so it cited an earlier case in the Sixth Circuit in which the Sixth Circuit held that the Boyd case was not applicable in Food and Drug cases.

[1181] THE COURT: The Boyd case was a criminal case?

MR. DODELL: No, the Boyd case was not a criminal case, Your Honor. But in the Tomato Puree case, 136 F2d 523, the Sixth Circuit expressly held Boyd case was not applicable to seizure under Food and Drug Act, that this was a civil action in which whatever was said in the Boyd case was not applicable. But the question of unlawful search and seizure does not arise properly in such a case. And

the same decision that was made in the Tomato Puree case 136 F2d 523 was also reached in a case involving peanut butter in the Fourth Circuit, 146 F2d 124. Subsequently this Plymouth Sedan case was decided by the Supreme Court which held the particular forfeiture situation involved in that case that a question of illegal search and seizure might be raised, but after that decision in the case of U.S. v 2000 Plastic Cases of Toothbrushes, the Third Circuit itself raised the question whether the Plymouth Sedan case was applicable to a seizure under the Food & Drug Act and it said no, just as the two earlier Circuit Court cases had distinguished Boyd, so we are distinguishing one Plymouth Sedan, and one of the important features is in One Plymouth Sedan case was no Court order that preceded the seizure and in Food & Drug cases a judge has to sign a court order before a seizure takes place.

* * *

[1188] THE COURT: All right, let's proceed.

MR. MADDEN: I would like to mark these receipts, Your Honor.

DEPUTY CLERK: Claimant's Exhibits 21A, B, and C, and D marked for Identification.

(Claimant's Exhibits 21A, B, C, and D were marked for Identification.)

BY MR. MADDEN:

Q. Now Mr. Quinn, I show you these documents that have been marked as 21A, B, C, and D and ask you whether or not they aren't receipts for purchases that you made and for the course that you took? A. I can't be sure exactly what the books were. The times are about right on these three, the other one I don't remember what the book was at all.

[1189] Q. Excuse me, what number? A. Exhibit 21C. Looks like it is a 1960 date.

Q. Well, Mr. Quinn, did you after the week or so that you have testified about ever go back there and purchase anything? A. Seems to me I did purchase another book, I don't know whether I purchased it there or just where it was, but seems to me I did

purchase another book, but don't remember what the book was.

Q. It could have been 1960? A. Could have been.

Q. Doesn't that exhibit 21C say E-Meter Book?

A. It is what it appears to say, uh huh.

MR. MADDEN: Your Honor, I would like to offer these in evidence.

THE COURT: All right, received.

(Claimant's Exhibits 21A, B, C, and D marked in Evidence.)

BY MR. MADDEN:

Q. Now what did you do with the books and pamphlets that you purchased? A. Turned them in to the government.

Q. To whom? [1190] A. I believe I submitted them to the Baltimore District.

Q. Did you submit them along with your reports? A. No, I don't think so, I think I submitted them after. I was submitting reports daily and kept the books and submitted them later.

Q. For about how long a time? A. I don't know.

Q. Would it have been days, weeks, or months?

A. Probably days or weeks. Remember, these books you are talking about weren't all at the same time, so the period of time would vary.

Q. Now, to whom in the Baltimore office did you send them? A. In all probability I just put them in the mail or delivered them to the Sample Custodian.

Q. Who was your immediate superior in the Baltimore office? A. Mr. George Suey (phonetic spelling) was my chief; Inspector Richard Williams was the District Director, and I was responsible to both of them.

Q. Why did you purchase another book in 1960?

A. I imagine because I was told to. I don't remember.

Q. Did you go in yourself and purchase it? [1191]

A. I just don't remember whether I did or not. I would say probably so if I turned it in.

Q. Now, do you have a copy of the reports that you made with you here today? A. No, sir.

Q. Do you have any files or records on your participation in this matter? A. Not with me, no, sir.

Q. Where are they? A. I turned in most of my reports to the Food and Drug Administration. I had some notebooks which I gave the U.S. Attorney in preparation for the trial.

Q. They were your workbooks? A. They belong to the government.

Q. I mean the ones you had worked on? A. Which ones are you talking about?

Q. Things you turned over to the U.S. Attorney? A. Yes, they were my notes.

Q. When did you turn them over to the U.S. Attorney? A. Today.

Q. I am not sure I recall your answers to where the reports you made at the time are. [1192] A. I turned them in at the time to the Baltimore District and presume they are in the files some place.

Q. Have you seen copies of those since that time? A. Yes, sir.

Q. When did you last see copies? A. Last week, I believe.

Q. Where? A. U. S. Attorney's Office.

Q. Here in this building? A. Yes, sir.

MR. MADDEN: Now, Your Honor, this man is under subpoena duces tecum and it has been opposed by government counsel, but I submit we have made enough of a finding to now give us the right to look at where this material went and that the burden has basically switched over to the government to show everything isn't tainted.

THE COURT: What authority can you cite that you are entitled to the word product of this witness here? This is not a Jencks Act situation.

MR. MADDEN: I think, Your Honor, it is basically the doctrine of the fruit of the poisonous tree, and the only way one can get at it after having established it may well be true, what [1193] we feel is true, is let us inquire into it.

THE COURT: I think what you are doing is going on a fishing expedition. I won't permit it. Any objection?

MR. HANNON: Of course we object, Your Honor.

THE COURT: I'll sustain the objection. Let's proceed.

MR. MADDEN: I would like to make exception.

THE COURT: You don't have to make exception, you have your objection and you are protected on the record.

MR. MADDEN: I have no further questions.

THE COURT: Any further questions?

MR. HANNON: Just a very few, Your Honor.

CROSS EXAMINATION

BY MR. HANNON:

Q. Mr. Quinn, that meeting you went to at the Church of Scientology, the first one you told us about, was it a public meeting that anybody was invited to go into? A. Appeared to be.

Q. You just walked in off the street? A. Yes, sir.

Q. Other people were walking in the same time as you? A. Yes, sir.

[1194] Q. When you went there on the first occasion could you tell us what your reason or reasons were for going there? A. Well, I was told to go in as an ordinary citizen and say that I was interested in Scientology and see what developed.

Q. Let me ask you, Mr. Quinn, whether or not you ever heard of Dianezene? A. Yes, sir.

Q. Now, was your sole purpose in going to the Church of Scientology on this first occasion only in connection with Scientology as such or the E-Meter as such? A. No, sir.

Q. Did you have another reason? A. Yes, sir.

Q. What was the other reason, sir? A. I was told to look out for any use or mention of Dianezene.

Q. Could you tell us whether or not Dianeze had been seized pursuant to the Court order at the Distribution Center, Inc., at an earlier time? A. Well, I don't know of my own knowledge, I was told that was some.

[1195] MR. HANNON: If Your Honor please, I would like to request the Court to take official notice of its own records in connection with District Court 10-58 which is a libel action filed in this court against the Distribution Center, Inc., located in the District of Columbia, and pursuant to what your court order issued on the 7th day of May 1958, which brought about the seizure of a certain quantity of drugs from the Distribution Center, Inc., which the witness has referred to, that libel was not contested, Your Honor, and the court order was finally entered.

(Hands document to the Court.)

THE COURT: All right, the Court will take judicial notice.

MR. HANNON: I think the record reflects they had some sort of antiradiation pill, Your Honor, which was considered to be misbranded.

THE COURT: All right.

MR. MADDEN: I would like to move to strike all these references that are irrelevant to this matter.

THE COURT: Overruled.

MR. MADDEN: May I ask the witness a question?

MR. HANNON: I am not through yet.

MR. MADDEN: I'm sorry, I thought you were.

[1196] BY MR. HANNON:

Q. Mr. Quinn, are you able to tell us whether or not any official government action was taken pursuant to your visit to the Church of Scientology during the times you have testified which brought about this proceeding we are now in trial on, sir?

MR. MADDEN: Your Honor, this is an ultimate legal conclusion and I think this witness is incompetent to testify as to that, and it is the whole question that I asked the right to be inquired into and have been denied right to inquire into it.

THE COURT: I don't understand the purpose of it yet. Repeat the question, Mr. Reporter.

THE REPORTER: (Reads the pending question.)

THE COURT: What do you mean by official action?

MR. HANNON: I am trying to establish this case did not grow out of his visit to the Church of Scientology at that time, and even what he did when he went to visit the Church in our judgment is perfectly proper, serves as no basis for any motion to suppress at this time. But in addition, I want to show there is no connection between his visits to the Church during the times he testified to and proceeding now pending before you.

THE COURT: If he knows I'll let him testify.

[1197] THE WITNESS: Yes, one of my superiors told me —

MR. MADDEN: Your Honor, it is just hearsay and I object again, he is not qualified to give it and he is about to recite hearsay and I strongly object.

MR. HANNON: There is such a thing as institutional knowledge, Your Honor, and I respectfully say what his superiors told him in respect to his visit is germane, respecting this hearing whether or not evidence should be suppressed.

THE COURT: Let's proceed.

THE WITNESS: My superior told me what I heard and saw there had no bearing on any violation of our law.

MR. HANNON: Thank you very much. I have no further questions.

MR. MADDEN: I would move to strike the last answer.

THE COURT: Motion denied.

REDIRECT EXAMINATION

BY MR. MADDEN:

Q. Now Mr. Quinn, you said when you went there you went for several reasons, to look into a past complaint about a drug and also to look into Scientology, is that correct? A. No, I was told to visit, to inquire about Scientology. [1198] I was told if I heard anything about several other things to try to remember to report it, but I don't believe I was told to inquire about it.

MR. MADDEN: No further questions.

THE COURT: Let me ask you a question, Mr. Madden. Suppose that the Food and Drug people had reason to suspect something was being sold at the Dart Drug Store, we'll say, which is a large corporation and national organization, and they sent an inspector up there to look the place over to find out what is going on, they are suspected of misbranding or mislabeling. Does the inspector have to go in with his name written all over his lapel to disclose his identity to the world? Is there anything wrong with that?

MR. MADDEN: Your Honor, the answer is I think a resounding yes, and the inspector that was on the stand went in two years ago made a show of putting in the exhibits he showed the people identifying him as an inspector and right within the Food and Drug Act of course the concept of going in and saying who you are, making an official formal inspection, is established and I again submit doing it another way is unconstitutional.

THE COURT: All right.

[1199] MR. HANNON: Your Honor, when they go in to make an inspection of the premises as Mr. Everline testified, is one thing, and Your Honor is not unmindful of the many, many cases before this Court where undercover officers went into gambling institutions where gambling is going on, liquor establishments that sell liquor in violation of the law, and the fact somebody goes in and doesn't say "I work for the Food and Drug Administration" doesn't constitute a violation of anybody's Constitutional rights.

MR. MADDEN: May it please the Court, the next witness, the one I would like to call is Mr. Merle Ryan, but I call him because he has all of these documents under his control and if I am not going to be able to go into them I want to proffer on the record.

THE COURT: Very well. What do you want, do you want to make a proffer?

[1200] MR. MADDEN: I would proffer Mr. Merle J. Ryan, Food and Drug Administration Officer with his files, a description of the files being attached.

MR. HANNON: Your Honor, may I be heard because I think there is something could be clarified here? Mr. Ryan has no files, I have no files, the Attorney General has the files that are in my office and are in custody of the Attorney General. None of us in the Department of Justice or any other agency are authorized to produce files in court pursuant to subpoena unless the head of an agency authorizes it. No subpoena was ever served on the Secretary of Commissioner of Food & Drug Administration or custodian. In addition, these subpoenas which we move to quash ask for all records and documents etc., relating to Scientology. I can't recall now how long this case was in the discovery procedural aspect but they had years in which to conduct discovery and take depositions of these witnesses, and none of this was done, and the last moment we come to trial and they ask for all our records. Your Honor knows under Rule 34 when somebody seeks a party's records, and the United States is a party to this, good cause must be shown, they would have had to show good cause during discovery proceedings and now, and all they say is they want [1201] all records and documents. If they make a representation of good cause we will produce them. That means something more than merely relevant, Your Honor. We are reluctant to produce them and ask Your Honor to quash the subpoenas.

THE COURT: I haven't ruled on it yet but will rule. Do you want to get the tender or proffer?

MR. MADDEN: Yes, I proffer Mr. Merle Ryan with all of the documents which I had understood he had in his control because for other reasons he has been wheeling them around here for two weeks and I would proffer them for the purpose of tracing through the fruit from the poisonous tree, that is the original Quinn material, and to demonstrate a subsequent search and seizure was illegal.

Now if Mr. Hannon is suggesting that we subpoena the Secretary of Health, Education and Welfare, I have

subpoenaed Mr. David Bress and everyone I could think of. Mr. Hannon is the one really has them.

THE COURT: I don't think it is necessary to do that. I think your subpoena is too broad, too oppressive, and amounts to a fishing expedition as I have indicated. You are seeking things which I do not believe you have a legal right to see or examine, so therefor the motion to quash is granted.

[1202] MR. MADDEN: This is all the subpoenas?

THE COURT: Yes. You have gotten some of the information from the government. I don't think sufficient cause has been shown anyway.

MR. HANNON: I would like to state any time Mr. Madden is ready to demonstrate good cause with respect to the documents we have —

THE COURT: I don't know of any case similar to this where the government has to turn over every piece of evidence or files, papers, to the opposition and let them scan through them in hope of finding something. They had plenty of time to do it before the proceeding started here.

MR. HANNON: We would like to stand on our position anytime he demonstrates good cause to Your Honor, and some particular item with respect to the document he is looking for, we stand ready to produce if we have it.

THE COURT: I understand.

MR. MADDEN: I call, Your Honor, for reports submitted by Quinn.

THE COURT: Under what authority?

MR. MADDEN: Mr. Hannon, he has them.

[1203] THE COURT: The only way you will get them if this case goes to the Court of Appeals, the Court of Appeals has the right to reverse my decision. I don't believe you are entitled to reports. If he had read from those reports you might have been entitled to them for purposes of cross examination or impeachment purposes, but he didn't use them, they are a work product, I don't believe you are entitled to them and that is going to end the matter so far as I am concerned. You are protected on the

record. Let's proceed. I think we have taken too long on this part of the case.

* * *

[1209] MR. MADDEN: Your Honor, with the exception of Mr. Nate Haseltine who is enroute back from Florida this afternoon, we would like to now go to the issue of the actual search and seizure and proffer or give testimony on that issue. It will include the testimony of several of the U.S. Marshals and it would include testimony of half a dozen or so of the people that were at the church at the time of the raid. And if Your Honor will permit me to call them as witnesses I will.

THE COURT: Can't you make a proffer of proof?

MR. MADDEN: I could. It may well be Mr. Hannon won't have a question what their testimony will be because much is already in affidavit form in the file. Could I show these proffers.

MR. HANNON: I would be interested in hearing the proffer. The proffer Mr. Madden just made is substantially different from the testimony of the witness.

THE COURT: Well, why don't you get together during the recess and see what he has to offer. We'll take a recess.

* * *

[1214] THE COURT: Good morning.

MR. HANNON: If Your Honor please, last Friday afternoon when we adjourned, we adjourned a few minutes early for the purpose of seeing whether Mr. Madden — whether we, Mr. Madden could work out a stipulation respecting how the seizure of these E-Meters and pamphlets was carried out, and we are unable to reach one.

And I wish at this time, Your Honor, please, to urge this upon the Court, Mr. Madden on behalf of the Claimant has had an opportunity to develop on the record this spy in the church idea he has been talking about, and I understand that is fully developed now and is a matter of record.

If Your Honor agrees on the Government's position predicated on the cases we cited to you Friday

that in Food and Drug seizure cases there is no room for the Fourth Amendment motion to suppress evidence. Then, under those circumstances it becomes unnecessary for Mr. Madden to offer the seven or eight witnesses he proposes to put on.

I can reasonably anticipate, if we are going to go into this area, will probably take two days of testimony out of the presence of the jury. If, as a matter of law, the motion to suppress evidence, which are heard in criminal cases, have no [1215] applicability in Food and Drug cases where the search is carried out pursuant to Court order, seems to me as a matter of law is no reason to go into this, and we are prepared to urge Your Honor to rule that the motion to suppress the E-Meters and the publications that were seized be denied as a matter of law and go on with the case.

* * *

THE COURT: Let me read you some of the language the Court set forth in that case [Lewis v. United States, 385 U.S. 206] and this case has convinced me my decision to deny the motion to suppress was the right one, the only one I could make, gentlemen.

* * *

[1217] Which is this case. The fact of this case indicated he had a right to do business with the occupant in my opinion.

* * *

[1218] THE COURT: Then, there is the Hoffa case in which I think there is some very good language on that case by the use of an undercover agent. The Court has given this matter considerable thought over the weekend and is convinced it was right in denying the motion to suppress, and I don't think it is necessary to go into these other matters.

MR. MADDEN: Your Honor, may I proffer for the record?

[1219] THE COURT: You may proffer for the record.

MR. MADDEN: Now, this proffer goes to the questions of the First Amendment, freedom of reli-

gion, and the Fourth Amendment, search and seizure.

First proffer is the deposition of Nathan Haseltine, whose deposition was taken on March 23rd, and counsel agreed that even though he got back in town over the weekend we can use it, and I proffer this deposition, intact, to the points that we have raised in these motions.

In addition, I proffer the testimony of William Knop, John Wooten, Jean Wooten, Gilbert Niehus, and Eunice Ford, and Natalie Fisher, who were people on the scene connected with Scientology on the date of the seizure.

Now, Your Honor, these are written out, and I can hand them to the Reporter to copy.

THE COURT: He can copy them into the record.

MR. MADDEN: Or, I can read them.

THE COURT: Let him copy them into the record.

MR. MADDEN: In addition, I would proffer the testimony of Deputy Marshal Hoch, and Deputy Marshal Duley, who led the seizure and that testimony would elicit that a dozen or more Marshal participated in the seizure, that a Food and Drug Administration named Everline was there assisting in the [1220] identification of the material to be seized, and that downstairs in the District Courthouse there are thousands of copies of some new books and hundreds of copies of other new books, and thousands of copies of some pamphlets, and there were more than two van loads of meters and materials taken.

And I would offer the list that was given by the United States Marshal of the literature seized.

THE COURT: Why don't you mark that as an exhibit.

THE DEPUTY CLERK: Claimant's Exhibit No. 22 for identification.

(Whereupon, Claimant's Exhibit No. 22 was marked for identification.)

MR. MADDEN: Now, Your Honor, with regard to the proffers of the six people, I have of my own hand-

markings I would like to give them to the Reporter at noon, if I may.

THE COURT: You may.

MR. MADDEN: And finally on this proffer, I would proffer the fact that the Food and Drug Administration had substantially all of the samples of so-called labeling in question months before the seizure, the fact that they gave no warning, oral warning or written, or suggestions that the Founding Church of Scientology stop using the Hubbard Electrometer, or Hubbard E-Meter, the fact they had knowledge that the Founding [1221] Church of Scientology was intimately involved in the Distribution Center and in the area there, the fact that they did not by their original pleadings in this case divulge in any way they were asking for a seizure of Church literature and on Church property.

THE COURT: Now, have you finished?

MR. MADDEN: I have.

Your Honor, I want the record to be clear that these proffers go to the First Amendment, the matters which we raised on our original motions to quash and the Fourth Amendment matters raised, and having put in my proffers, I would like now to move to strike the Government's evidence and renew the motions for directed verdict.

THE COURT: It will be denied, both motions denied.

* * *

[1259] JOHN LESLIE FUDGE

was called as a witness for and on behalf of the Claimants, and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MADDEN:

* * *

[1262] Q. Now, I ask you, Reverend Fudge, if you know, to state when the oldest of those five Hubbard Electrometers was invented, or first put into use?

* * *

THE WITNESS: Government's Exhibit 6, which is this blue meter, is the oldest one, and I believe you asked me when it was made, or when the oldest one was made. It would have been very shortly before the first time I ever saw this type of meter, which I saw for the first time in February of 1958, and the earliest date on which this type of meter was in use was in January of 1958, on a special course here in Washington, D.C.

BY MR. MADDEN:

Q. Is that the first time it was used in the scientological movement in any location? A. To my knowledge, yes, sir.

Q. Now, aside from having first seen one in early 1958, [1263] were you familiar with the manner in which it was being developed, and the people who were developing it? A. To a very slight degree, I did know that there was development being made in the last part of 1957 of this meter, and I know that some experimentation had been done on it during the latter part of 1957, but I was not closely associated with it as that was being done here in the United States.

Q. Was there a Hubbard Electrometer, or Hubbard E-Meter in existence before the last part of 1957 to your knowledge? A. No, sir, I could testify to that without any hesitation whatever, that as of the time that I left for England, which was August 1957, there was no Hubbard E-Meter, nor had one been made, or not yet being devised, let's say.

* * *

CROSS EXAMINATION

BY MR. DODELL:

* * *

[1265] Q. I take it then that Scientology was in existence in 1955? A. Oh, yes, sir.

Q. Were you familiar with references to the E-Meters and literature in existence prior to 1958?

* * *

THE WITNESS: I had seen references to E-Meters, yes, sir. I was under the impression that

those referred to the Volney Mathison Electropsychometer which I had never seen and never used.

* * *

[1282] Q. I believe that I had asked whether the first statement on page 7 of the publication the Hubbard Electrometer, Government Exhibit No. 9, is applicable to the Hubbard Electrometer. A. Yes, sir, it is.

Q. Now on the preceding page there is a passage stating — strike that.

The preceding chapter is headed The First Statement on the Electrometer from the Original Manuscript on the Subject by L. Ron Hubbard. It begins on page 3 of this book. On page 6, at the end of that chapter, I would like to read you the last two paragraphs and then ask a question based on them:

Then in 1950 we began to develop the earliest E-Meters. They were the first and only instruments [1283] capable of measuring the rapid shifts in density of a body under the influence of thought. It measured them well enough to give an auditor a deep and marvelous insight into the mind of his preclears.

This instrument was not just an aid to Dianetics. It gave man his first keen look into the heads and hearts of his fellows. The nimble needle of the E-Meter can detect with accuracy things which would have otherwise been hidden from man forever.

Now are those paragraphs applicable to the Hubbard E-Meter? A. Yes, sir.

Q. Thank you.

MR. MADDEN: Your Honor, I would like to object to the form of that last question, are those paragraphs applicable to. I think the question is do they refer to the Hubbard E-Meter.

THE COURT: Well, do you accept that suggestion?

MR. DODELL: No, I am satisfied with my question.

THE COURT: Very well, I will overrule the objection.

MR. DODELL: May I have Government Exhibit 10, please.

* * *

[1288] Q. And there is nothing in the book that indicates [1289] that the E-Meter referred to there is not the Hubbard Electrometer, although the book was published in 1961 — excuse me — was published in a new edition in 1961, when there was in fact a Hubbard Electrometer, is that correct? A. Well, sir, I have to disagree with you on that, if you will forgive me, because the foreword does contain reference to the Mathison Electropsychometer, and it states it right in the foreword; so I would say that a person reading this book, similar to my own reaction the first time I ever read it, would assume that the author was referring to that machine.

Q. So it's your testimony that this book [Government Exhibit 10] was published in 1961 and advertised in Scientology, referred to incidents that could be audited with an E-Meter but was understood in the movement to only refer to auditing that could be done some years before with the Volney Mathison —

MR. MADDEN: May it please the Court, the last question, that it was published in 1961, it was reprinted in 1961, and there is all the difference in the world.

THE COURT: Qualify your question.

BY MR. DODELL:

Q. I would like to qualify: was reprinted in 1961 and advertised in 1961, and yet is only referring to [1290] auditing incidents with the instrument known as the Volney Mathison Electropsychometer? A. Yes, sir; but that does not mean to say that this meter could not do the same thing.

Q. Excuse me? A. The answer to your question is yes, it is referring to incidents that would have been audited with the Mathison Meter. That does not mean to say that this meter could not do the same thing. It is just simply that we were not doing that same thing.

Q. Could the Hubbard Electrometer do the same thing? A. Yes.

Q. Is the Hubbard Electrometer essentially the same as the Volney Mathison Electropsychometer?

A. I don't think so. I am not an electronics man, so I don't know the difference. I don't know enough about the differences to testify as an expert on that, but it is quite obvious just from the most casual examination that there is a vast difference in size, and therefore the instrumentation in the meters must be quite different, aside from which I happen to know that the Mathison Meter does operate on the main current and this one operates on pen light batteries. As regards the sensitivity and as regards registration ranges, [1291] again I am not certain; I really don't know about that.

Q. So is it your testimony, then, that aside from the difference in shape and the fact that there is a different source of current, you don't know what other differences there may be between the two instruments? A. That is what I said, yes.

* * *

[Claimant's Request for General Verdict and Interrogatories]

[Filed April 18, 1967, and denied]

We the jury find in favor of the _____, and answer the interrogatories submitted to us as follows:

(1) Is the Hubbard Electrometer or Hubbard E-Meter a device within the meaning of the Food, Drug and Cosmetic Act? Answer "yes" or "no". _____.

(2) Is any, some portion, or all of the literature admitted into evidence, labeling for the Hubbard Electrometer or Hubbard E-Meter? Answer "yes" or "no". _____.

(3) Does the labeling for the Hubbard Electrometer or Hubbard E-Meter contain false or misleading statements with respect to its intended use? Answer "yes" or "no". _____.

(4) Does the labeling for the Hubbard Electrometer or Hubbard E-Meter contain adequate directions for its use? Answer "yes" or "no". _____.

Dated April ___, 1967.

Foreman

NOTES FROM THE JURY

[1558] Note #1:

- (1) "E Meter Essentials"
- (2) "Instructions that comes with the meter."
- (3) "The contract that an individual signs when he or she goes for auditing."
- (4) "Chart that Mr. Swain read in regards to medical and physical aspects."
- (5) "E Meter and Mathewson Meter with Exhibits 2A and 2B and 3."
- (6) "All of the Ability magazines that deal with the use and effect of the Hubbard E Meter."
- (7) "PAB's Book 5."
- (8) "Letter between Mrs. Turner and customs."

(SIGNED) "W. C. Goodwin"

"Foreman"

* * *

[1559] Note #2:

- (1) "Creed of the Church"
- (2) "Church's Charter of Incorporation (all) Three."
- (3) "Dr. Fudge's certificate from the District."
- (4) "Book that deals with the statement that the E Meter can read basic metabolism and increased the I.Q."

(5) "Book on Dianetics."

(SIGNED) "W. C. Goodwin"

"Foreman"

(IN OPEN COURT)

[1559] (Whereupon, at 2:18 P.M., the Court reconvened, out of the presence of the Jury, to consider the two notes above-inscribed.)

(Out of the Presence of the Jury)

THE COURT: All right, now what is the problem?

MR. MADDEN: Your Honor, one of the things they asked for in the First List is a chart, and the chart the testimony was that the chart had to be read with the book, and the book is "Science of Survival," and the chart is found in the back of the book, and I feel that the chart should not go in without the book. Now the problem with the book is and the problem

with the five or six things we are here now to discuss is that they are full of paperclip marks that point [1560] out the sequence, and the book has some pencil checkmarks in it and I think that those are materials that were read to the jury from the witness stand, but now to send it in with a marker showing just where they are, I feel —

THE COURT: You mean just for the page it was read from?

MR. MADDEN: Yes.

THE COURT: What is wrong with that? Can you tell me? It is in evidence. What do you want, the jury to read the whole book?

MR. MADDEN: I want the jury to be able to look at the matter in context rather than have it fall open at one page.

THE COURT: Did the counsel read from a certain page or part of a page where there is a clip?

MR. MADDEN: I don't know. It is probably true in some circumstances.

THE COURT: Hand me one of them. Tell me exactly what you have in mind, Mr. Madden.

MR. MADDEN: Well, Your Honor, there are just in the margin many paper clip marks that hit the high points. I think that it is probably a fair statement to say that in some instances there were readings from them and in some [1561] there were not. Would that be accurate, counsel?

MR. DODELL: I couldn't comment on the proportion, but there are marks.

THE COURT: Now we are going to be here for about six weeks if you expect this jury to read through every one of these books and pamphlets without going right to a page where there is a clip there. It seems to me unfair to this jury. This goes to both sides, to hand them a book like this and say "Find it." Don't you see? They are going to get the books with the clips in it, or the parts that counsel for the Government read or you read, and I am going to give them all the exhibits.

I am going to call them in and say I am going to send all the exhibits in. Do you have one of these little carts or trucks?

MR. DODELL: I think most of them are in. The others wouldn't be needed to put on a cart.

THE COURT: I think it is perfectly proper to give them a book and if counsel from the Government read from a certain part and they had a little clip, this is the part they want to read. I am not going to expect the jury to read the whole book and try to pick out the parts that were read to them. I don't think that is fair.

[1562] MR. MADDEN: My point is they had it read to them and that was the evidence. Now, it is just like taking the transcript in, with my ideas —

THE COURT: They had it read to them, but the clip was located on the part that was read, wasn't it?

MR. MADDEN: In some cases, Your Honor. I am sure Mr. Swain didn't read from all the places that are clipped. He did from some. I think the Government in a case like this ought to have the burden of giving clean copies of the exhibits to the jury rather than marked up copies.

THE COURT: Are these the copy in evidence?

MR. MADDEN: Yes.

THE COURT: I will let them go to the jury like they are.

MR. MADDEN: I will except to that ruling.

THE COURT: You may except.

MR. MADDEN: Is this true of the "Ability" magazines? There are five or six of them that have numerous clip marks in them. My argument would be the same as to these.

THE COURT: Pass me one of them. Let me see it.

MR. MADDEN: let me give you an example here. Are these the right ones, counsel, that we are talking about?

[1563] These are the ones in question, are they not?

THE COURT: Yes, I understand. Now, there is a mark here made by a paper clip. This was read to the jury, wasn't it?

MR. DODELL: Well, Your Honor, I cannot represent that every place there was — that has a paper clip — was read to the jury.

THE COURT: Well, you have taken them out anyway.

MR. DODELL: May I state, Your Honor, that about, at least a hundred exhibits was sent into the jury room already and in each of those instances there was no paper clip or any other mark whatsoever. At least a hundred exhibits. The only exhibits in which there are some paper clips are those seven exhibits in which we have not been able to locate a second copy.

So, in other words, we made every effort that we could to obtain a clean copy but for example in the case of these two books they were not among the seized literature. They were books that Mr. Everline purchased and in the course of handling them over the four years, certain clip marks do remain but otherwise these books are clean and if we had another copy we would submit it.

[1564] May I point out also, that the Jury only asked for this tone chart which they have not yet received because Mr. Madden wanted the book to go along with it.

THE COURT: Did they ask for the chart?

MR. DODELL: They asked only for the chart because they have not yet gotten it.

MR. MADDEN: May I speak?

THE COURT: No, just a minute, Mr. Madden. Let me see the note. Which note is that?

MR. DODELL: The longer note. Item 4.

THE COURT: Item 4 said "Chart that Mr. Swain read in regards to medical and physical aspects." Did Mr. Swain refer to this chart?

MR. DODELL: Yes, he did, Your Honor.

THE COURT: Let me see the chart. Pass it up. Now, do you agree that this is what they refer to in the note, the chart?

MR. MADDEN: Yes, Your Honor, but the chart fits in the back of a book and Mr. Swain testified on a question from Government Counsel, "I ask you is this the chart to which you are referring this book is to be used with?" So I feel that it ought to go in with the book.

THE COURT: I don't agree with you. They didn't [1565] ask for the book and I am not going to send them the book. Send in the chart.

MR. DODELL: May that go in now. They asked for it three hours ago.

MR. MADDEN: I think they did ask for the book. Number 5 says the book on Dianetics.

THE COURT: No. 5, Note 2, "Book on Dianetics."

MR. MADDEN: This book that I ask go in with the chart is a book on Dianetics. I think that fits their later request. I think it ought to go in.

THE COURT: All right. I will find out. Bring in the Jury.

Put them in the Jury Box.

(Whereupon, the Jury entered the Courtroom and took seats in the Jury Box.)

MR. MADDEN: They are both on Dianetics.

THE COURT: The same thing?

MR. MADDEN: No.

MR. DODELL: The other book is entitled "Dianetics, Science of Mental Health," Your Honor.

THE COURT: Good afternoon. Who is the Foreman? Your name? Mr. Goodwin. You may be seated. Now, the Court received two notes from you as Foreman. First note, No. 1 [1566] listing I think eight items. Now did you receive all eight of the items on Note No. 1?

MR. GOODWIN: (Foreman of the Jury) I think there was one chart we didn't receive.

THE COURT: Now, the chart I think that you referred to in No. 4 reads, "Chart that Mr. Swain read in regards to medical and physical aspects." Is that correct?

MR. GOODWIN: That is the way it was told to me.

THE COURT: All right. Let me have the chart. Do you have it? Government Exhibit No. 41. Is this the chart? (holds it up toward the Jury) Now, we will go through Note No. 2. Give this chart to them, Mr. Marshall.

Now, let's see what you have received as requested in Note No. 2 "(1) Creed of the Church." Did you receive that?

(Jury affirms)

THE COURT: "(2) Church's Charter of incorporation (all) Three." Did you receive that?

(Jury affirms)

THE COURT: "(3) Dr. Fudge's certificate from the District." Did you receive that?

(Jury affirms)

THE COURT: (4) Book that deals with the statement that the E Meter can read basic metabolism and increase the I.Q." Did you see that?

[1567] MR. GOODWIN: (Foreman of the Jury) We already had that, we cancelled that.

THE COURT: You had that. Now you want "(5) Book on Dianetics." There have been two books, I think. One is "Science of Survival" by L. Ron Hubbard, and the other book on Dianetics is "The Modern Science of Mental Health." I will send them both in to you. (after hesitation from Jury)

MR. GOODWIN: (Foreman of the Jury) We didn't receive either one of them.

THE COURT: What are these other books? The ones they didn't ask for?

MR. DODELL: They are the remaining "Ability" magazines.

THE COURT: I will tell you what I am going to do. You may have all the exhibits. You may go through them leisurely and examine them. I will put all the exhibits on the table for you.

Read the note into the record, Miss Reporter.
(Notes incorporated into the record above.)

THE COURT: Anything further?

MR. MADDEN: No.

(Whereupon, at 2:30, the Jury retired from the courtroom to resume their deliberations.)

[1568] 3:40 P.M.

VERDICT

THE DEPUTY CLERK: Will the Foreman please rise.

Is this the Verdict of the Jury, Mr. Foreman? May I have it, please.

(The Deputy Clerk receives the written verdict from the Foreman of the Jury and gives it to the Court.)

THE COURT: You may read the Verdict.

THE DEPUTY CLERK: The Verdict of the Jury is that they find for the Government.

This verdict is signed by the Foreman, Wilbur C. Goodwin, and it is dated April 19, 1967.

* * *

[Caption omitted in printing]

VERDICT

For the Government

/s/ Wilbur C. Goodwin
Foreman

April 19, 1967
Date

[Filed June 29, 1967]

[Caption omitted in printing]

DECREE OF CONDEMNATION

This cause having come on for trial on April 3, 1967, and having been tried by a jury, and the jury having found, on April 19, 1967, that the seized instruments are misbranded devices, and it appearing to the Court that the written, printed and graphic matter that was seized contains numerous and pervasive false and misleading statements, a sampling of which is included in Appendix A attached hereto, consisting of pages 1 through 43, and it further appearing that the seized devices should be destroyed, together with the publications included in Appendix A, in order to protect the public health and welfare, it is, this 28th day of June, 1967,

ORDERED, ADJUDGED, AND DECREED, that the devices under seizure be and they hereby are condemned pursuant to 21 U.S.C. 334(a); and it is further

ORDERED, ADJUDGED AND DECREED, that pursuant to 21 U.S.C. 334(e), the United States of America shall have and recover from the claimants herein, jointly and severally, court costs, and fees, and storage and other proper expenses to be taxed; and it is further

ORDERED, ADJUDGED AND DECREED, that the United States Marshal in and for this District shall destroy the seized devices together with all seized copies of the publications, and written, printed and graphic matter listed in Appendix A attached hereto, said Appendix consisting of pages 1 through 43; and shall not destroy any other publications or written, printed or graphic matter, but shall deliver all such other publications, etc. to claimant Founding Church of Scientology of Washington, D.C.; and make due return thereof; and it is further

ORDERED, ADJUDGED AND DECREED, that all of the provisions set forth above shall be stayed until the expiration of the time for the taking of an appeal or until the final disposition of any appeal which may be taken from this decree.

/s/ John J. Sirica
United States District
Judge

JA 230
APPENDIX A

<u>Gov't. Exhibit No.</u>	<u>TITLE, DATE (& Miscellaneous Comments)</u>	<u>Page</u>	<u>STATEMENT¹</u>
7	E. Meter Essentials 1961 by L. Ron Hubbard (1961)		"The Hubbard Electrometer is an electronic device for measuring the mental state and change of state of Homo Sapiens."
		6	
		7	"There is no known way to clear anyone without using a meter."
		7	[The meter is a precision instrument.]
		18	"The meter will also read Basal Metabolism, interesting because it tells you if the preclear really is eating, or has eaten breakfast."
		23	[The meter is omniscient.]
9	The Hubbard Electrometer by John Sanborn		
		1	"The E Meter has had a large role in clearing, during the past few years."
		6	"Then in 1950 we began to develop the earliest E Meters. They were the first and only instruments capable of measuring the rapid shifts in density of a body under the influence of thought. It measured them well enough to give an auditor a deep and marvelous insight into the mind of his preclears. "This instrument was not just an aid to Dianetics. It gave man his first look into the heads and

¹Items in brackets give the substance of the statement at the page indicated, rather than the exact quotation. In this "Statement" column are included false or misleading statements in the seized literature. The list includes a sampling, and not all or even most of the false or misleading statements in each publication. This list does not include statements from publications which were not seized.

hearts of his fellows. The nimble needle of the E Meter can detect with accuracy things which would be otherwise hidden from man forever."

- 10 "Once the auditor knows the theory of what is happening and knows what the facsimiles are doing, or are capable of doing, he can become an artist with an E Meter. His preclears will clear rapidly, his auditing time per case reduces as much as an hour where he needed fifty or a hundred before — but actually there is no time comparison for without the meter he cannot get comparable results. One has to be a meter auditor to produce optimum results on meter processes."

- 11 "We are indeed fortunate to have the E Meter. To read the preclear with an E Meter does not require major surgery, but only that he hold two tin cans."

"And the E Meter is never wrong. It sees all, it knows all."

"It tells everything."

- 38 [Person can be put on meter to get rid of his headache.]

- 10 Scientology: A History of Man by L. Ron Hubbard (Limited manuscript edition 1952; Fourth edition 1961; copyright 1961.) Footnote, page 8: "See 'The Hubbard Electrometer' by John Sanborn . . ."). Advertised in e.g., Government Exhibit 10-C, Professional Auditor's Bulletin, September 1961, on back cover, under heading "Three Books", as follows: "The new 1961 edition of this famous book is at last in stock. We need hardly remind

"Further, it is very hard to argue with a miracle. Today, Eleanor has arthritis. She is audited 'whole track' with 1952 techniques. Tonight she doesn't have arthritis."

"A preclear suddenly recovers the ability, carefully learned eighty years ago, to play a piano; an electronics engineer, doing poorly before, suddenly wraps up formulae that would puzzle Einstein and which may get Man off Earth . . ."

you of the story it tells
— it is your story
and ours over the last
sixty trillion years.
This book has the re-
putation of being sold
out as soon as publish-
ed, so order your copy
promptly."

10 "All incidents in this volume
should be detected and au-
dited with the assistance of
an E-meter. If it were not
for the E-Meter these inci-
dents would have remained
undetected except in the ha-
ziest state. Without an E-
Meter, they cannot be au-
dited with security or even
safety for the preclear."

11 [Processing cures tubercu-
losis.]

13 "The pulp of a tooth, for in-
stance, tracks back, cell by
cell, to early engrams; when
these are relieved a 'tooth-
ache' in that tooth becomes
almost impossible, no matter
how many 'nerves' are ex-
posed, a matter which brings
about quite a revolution in
dentistry."

"Auditing . . . alters physi-
cal structure, eradicates
physical malformations."

14 "Paralysis, anxiety stomachs,
arthritis and many ills and
aberrations have been relieved
by auditing them. An E-meter
shows them up and makes them
confess their misdeeds."

- | | | | |
|----|--|----|---|
| 11 | Scientology
Books (In-
cludes "E Meter | 1 | "THIS IS LIFE" by Reg Sharpe
"It was early in 1953 that I was
first introduced to Scientology. |
| | | 21 | "Cancer has been eradicated
by auditing out conception and
mitosis." |
| | | 22 | "It should not require more
than a score of hours to clear
up the present life until heavy
incidents in the past can be
audited; this is true for the
neurotic and relatively sane
only, it is not true for the psy-
chotics; for them it may be
necessary to audit prenatals
or use other techniques and
to spend perhaps hundreds of
hours of ARC processing to
make them entirely sane and
stable." |
| | | 24 | [Auditing can alter shape and
form of body.] |
| | | 25 | [Auditing can make one ambi-
dextrous, and eradicate se-
vere psychosomatic ills.] |
| | | 40 | ". . . the auditor can get rid
of psychosomatics by the bale
for the preclear." |
| | | 48 | "Cure up the lame and halt
and the incompetent with what-
ever display of technique you
need." |
| | | 49 | [Auditing can cure heart con-
dition.] |
| | | 50 | [Auditing can make insane
sane.] |
| | | 64 | "It is called 'Facsimile One'
because it is the first proven-
up whole track incident which,
when audited out of a long ser-
ies of people, was found to
eradicate such things as as-
thma, sinus, trouble, chronic
chills, and a host of other ills. |

Essentials 1961"
which dates it in
1961 or later.)

At that time I was engaged in developing a new business and handicapped to some extent by ill-health. As a result of my consulting a Scientology Practitioner I have been able to foster the growth of my business without indisposition and without worry.

"THE PROBLEMS OF WORK"
by L. Ron Hubbard

"Scientology can and does increase human intelligence. By the most exact tests known it has been proved that Scientology can greatly increase intelligence in an individual.

2 "DIANETICS: THE MODERN
SCIENCE OF MENTAL HEALTH"
by L. Ron Hubbard

"A clear can be tested for any and all aberrations and can be examined for any self generated diseases referred to as psychosomatic ills. These tests confirm the clear to be entirely without such ills and aberrations.

"NOTE: Dianetics is a branch of Scientology which deals with mental anatomy. This book brings vital understanding of the mind which is essential to further study of Scientology.

13 Scientology:
Clear Procedure
Issue One by L.
Ron Hubbard
Copyright 1957

34 [Processing produces a clear, who is free of psychoses and neuroses, and has an I. Q. of above 135.]

7 [E-Meter is used sometimes for psychophysical difficulties]" Auditor: use the word 'psychophysical' rather than psychosomatic and stay out of medical field."

[Psycho physical ailments can be cleared.]

"You can always change a body or recover it from some illness without much helping the person himself."

- 12 "Now here we had in Dianetics one of the more interesting phenomenon of an auditor being able to make a preclear physically well without the preclear once finding out about it The man priorly could not walk, apparently, and after auditing he could walk and yet he did not attribute to Dianetics or to the auditor any of this renewed ability."

Inside
Back
Cover

"The Hubbard Guidance Center and the

The Academy of Scientology

KNOW THEIR BUSINESS

We can train two people in Clear Procedure and supervise their co-auditing through to Clear — \$725 each.

We can individually process you to Clear.

We can train you to process others to Clear.

The only variable today is the skill of the auditor. And we can reduce that to certain skill with Modern instruction."

- 14 A Brief Biography of L. Ron Hubbard 1969 (Inside back cover is a list of books available from The Distribution Center, Inc., in-

- 10 "That Dianetics and Scientology have contributed something is attested by the fact that by them we can raise the intelligence quotient of a person about one point per hour of processing (simple mental exercises) — a thing which was considered impossible a few years ago."

cluding "The Hubbard Electrometer The Manual of the E-Meter"

- 15 Why Some Fight Scientology by L. Ron Hubbard (1960)

"[The E-Meter] was developed over the years by a brilliant crew of electronics men under my personal supervision, using principles in electronics almost a century old these men refined a well known instrument into a small, infinitely more reliable aide.

"The grandfather of the electrometer is an enormous machine costing about \$18,000 and available only in large scientific laboratories. Even improving upon this, yet making a portable instrument, these men long ago brought out the Hubbard Electrometer and brought it into a cost range of less than \$100.

"Every professional Scientologist has one of these. And can use it in other ways than mental health."

- 16 What is Scientology (1961)

2 [I.Q. and intelligence can be improved.]

3 "The first science to contain exact technology to routinely alleviate physical illness with complete predictable success."

7 "A Release is precisely defined as one who has no psychotic or neurotic tendencies of any kind and has a certainty that he will get no worse.

"Technically, a Release is one whose graph has been raised by processing and whose I.Q. has been improved.

"This is done by Scientology processing obtainable from the

- Hubbard Guidance Center or from the 'H.A.S. Co.-Audit' (Do it yourself Processing)."
- 17 L. Ron Hubbard's PAB's Book 1 (1955) (E-Meter referred to at page 16, and other places)
- 3 [Scientology, through address to the human spirit can best heal psycho-somatic illness (which include some seventy per cent of the illnesses of man.)]
- 4 "Where predisposition to disease or injury exists, or where disease or injury is being prolonged, or unhappiness and worry caused mental or physical upset, or we desire to better or improve communications or social relationships, we are dealing, if we are efficient, in the realm of Scientology."
- 13 [Scientology can cure a withered limb.]
- 16 [Pain and numbness]
- 17 Scientology "knocks out the entities and, therefore, automatically the mechanics which are making the preclear sick."
- 48 [Auditing can clear away manic state. This involves use of E-Meter (See page 47.)]
- 49 [Auditing makes person with weak heart, or chronically ill person well.]
- 18 L. Ron Hubbard's PAB's Book II (1956) E-Meter referred to at page 6 and 25
- 3 [Same as Exhibit 17]
- 4 [Same as Exhibit 17]
- 16 [Auditing resolves ailing stomachs.]
- 25 "I would no more audit one of these people without an

- 19 L. Ron Hubbard's PAB's Book 4 (1956) E-Meter referred to at page 36
- 90 "To get rid of a cough process beauty and sex, or for a very bad cough, process sex and beauty."
- 3 [Same as Exhibit 17]
- 4 [Same as Exhibit 17]
- 9 "I have yet to see a preclear who is having physical difficulty of a major sort or mental difficulty, fail to improve under a long and careful and meticulous administration of the Opening Procedure of 8-C."
- 38 "Practically any and every psychosomatic illness there is, is represented and caused by a fascimile on the whole track which is in suspension with its location, out of location as far as the preclear is concerned.
- So we are running engrams again. So we are using a mechanical aid in order to establish this."
- 47-48 [Processing can be used to treat withered leg, neurological illness, physical or psychomatic illness, except from acute infection or accident, ulcer, migraine headaches.]

20 L. Ron Hubbard's PAB's Book 5 (1958) E-Meter referred to at page 52.

- 107 [Processing can alleviate lameness, ulcer, illness.]
- 32 "Running this command, which is in itself a sort of remedy of havingness, and repairing and remedying the havingness in the preclear as we go, we will discover practically any and all phenomena associated with the service facsimile will come away and clear up and the limb nose or eye will get well."
- 34- "Three methods of Dissemination"
- 45
- 34 "The three methods are (1) 'I will talk to anyone' (2) Illness researches (3) Casualty contact"
- 36 "If it is the purpose of the minister simply to solve the problem of the preclear thus phoning, he can, of course, cancel out his clientele with the greatest of ease. This, however, is not the purpose. His purpose is to get this individual into a weekly group processing unit. . . . He should not talk to the person in such a way as to ease the problem. This may be the last problem this person has and it would be a disservice to simply solve it as easily as that. One makes something of the problem, not makes nothing of it."
- 38 "Of course it stands to reason that any auditor who has a fairly good sized group which is undergoing free processing will get from the group many candidates for (1) personal auditing and (2) a basic course in Scientology for which charge can be made."
- 40 "The techniques in use at that time [1951] were effort proces-

- sing and overt acts and motivators. We alleviated the majority of preclears reporting, using only those three hours. We did this for polio victims, arthritis and were about to do it for asthmatics when the surging success of the project frightened various individuals who had other plans for Dianetics."
- 42 Remember, today it is no fantasy whatsoever that you can alleviate the majority of sufferers of various chronic illnesses."
- 53- [Auditing can cure radiation
54 burns.]
- 64- [A purported letter is reprinted,
67 stating that processing made children more beautiful, improved I. Q. and cured laryngitis and dermatitis.
- 21 Sanity for the Layman by Raymond Kemp. Copyright by L. Ron Hubbard 1961. December 1959 introduction. Reference page 49 to Electropsychometer.
- 13 [Paralysis of leg cured.]
- 43 "Above this, and this is the goal of all Scientology therapy, is a state called clear. A clear would be a truly free person who is at willing and knowing cause, over his mind, his body and his environment, he is without a reactive or subconscious mind. CLEARS EXIST."
- 14 [Reactive mind can cause psychosomatic illness, neurosis and psychoses.]
- 16 [Psychosomatic illness means "not 'Imagined illness' but real physical illness brought about by the mind."]
- 19 "This is in no way an attempt to decry the efforts of the Medical Practitioner, who in the field of emergency surgery, obstetrics and orthopedics does a most useful job in

society. But it must also be realized that Medicine as a subject contains no definition for mind, and thus cannot be expected to invade the field covered here.

- 21 "... a hand crushed in a deck chair took six hours to return to normal, a cracked collar bone ten hours, and a second degree burn from an exploding percolator, healed without scar in one week.

"Amazing as it may seem, or even unbelievable, there are on file over 5,000 attested case histories showing this to be so."

- 48 "Scientology is the only sphere of healing where the layman can understand use, and practice the therapy effectively and safely, with the minimum of supervision."

- 49 "What is done is this. the P.C. is connected to an instrument known as an Electropsychometer. . . ."

- 52 "A burn or bruise or even sprains or breaks heal much more swiftly when Scientology assists."

- 71 [Scientology raises I.Q.]

- 88 "PSYCHOSOMATIC ILLNESS. A condition resulting from a 'State of Mind.' Such illnesses are quite genuine and account for some seventy percent of all ills at this time. Technically in this science, a chronic facsimile to which the person is holding account for failures. All illness is traceable to facsimiles.

- 22 Scientology "New In- "Now an auditor trained in
8-80 by L. Ron troduction" this material by the Acad-

Hubbard (1952)
Bibliography includes
"Electropsychometric
Auditing" by L. Ron
Hubbard. New Intro-
duction, November 1957.
E-Meter, referred to,
e.g., at 24.

emy of Scientology can
handle with precision even
the insane or a few days' old
baby.

[Auditor can raise intelligence
quotient.]

"Editorial
Note"

"With this book, the ability
to make one's body old or
young at will, the ability to
heal the ill without physical
contact, the ability to cure
the insane and the incapaci-
tated is set forth for the
physician, the layman, the
the mathematician, and the
physicist."

13 "All. . . psychosomatic ills
are traceable to facsimiles."

14 "The remedy of human aber-
rations and illness is a minor
goal of Scientology. Its dis-
coveries make this possible.

16-17 [Auditors can erase or reduce
facsimiles.]

24 "The best auditing and the
fastest by far is done with the
E Meter. The meter practical-
ly runs the case. . . ."

"'Black and White' can be self-
audited, but in this case the E-
Meter becomes quite vital."

56 "As far as psychosomatic ill-
nesses are concerned derange-
ments of the body, malforma-
tions, the malfunction thetans
can care for these with great
ease once he has been brought
up the scale. He will care for
them automatically and put the
body in excellent condition."

70 "DIANETICS—The original
name given the system for con-

trol analysis and development of human thought developed by L. Ron Hubbard, molecular physicist, after more than 20 years' research. Dianetics was, primarily, a system of therapy, and as such, was adopted by thousands of persons who found in it a means of relieving themselves and others of illnesses and aberrations."

- 72 "FACSIMILE—. . . Although a facsimile, like the thought of which it is a part, has no wave length, no mass, no time and space, its emotional force on the human organism can be measured fairly accurately with an Electropsychometer regardless of when it happened.
- 74 ["Locks" can cause psychosomatic illnesses. "Locks" can be "scanned" to get a person up the Tone Scale so "that his case can progress."]
- 80 "Scientology, because of its scope, cannot be locked within the boundaries of a therapy for those who are ill. However, when you learn why man is ill, you automatically have the key for his release."
- 25 The Only Valid — [The Security Check is described
Security Check in other literature as being nec-
1961 essary in processing to clear.
(See e.g. Exhibit 10G.) Exhibit
25 refers to clearing changes
of meter needle behavior caused
by questions from Security
Check.]
- 29 Dianetics The Inside "Dianetics sets forth the non-
Evolution of a Front germ theory of disease embrac-
Science by L. Ron Jacket ing, it has been estimated by
Hubbard Copy- of some seventy per cent of
right 1958 man's pathology."

- 34 Reactive memory bank is "ready to manufacture anything you can name by way of physical ills or at least to predispose them, possibly even cancer."
- 43 [Attempted abortions cause ulcers]. . . "lifting the engram of such an event cures the ulcer:"
- 44 "The reactive mind says things have to be such and so and that's survival. So a man grows a withered arm. That's survival. Or he has inability to see, hysterical or actual blindness. That's survival. Sure it is. Good solid sense. Had an engram about it, didn't he.

"What's T.B. Predisposition of the nervous system to infection. What's this, what's that? You've got the proposition now. It works. The psychosomatic ills, the arthritis, the impotence, this and that, they go away when the engrams are cleared from the bottom."

[200 cures in 200 patients tested.]
"And some of them were really gruesome cases. "
- 46 "Knowing all the axioms and mechanisms, dianetics is easy to apply to the fairly normal individual and can relieve his occlusions and colds and arthritis and other psychosomatic ills."
- 47 "Dianetics offers a therapeutic technique with which we can treat any and all inorganic mental and organic psychosomatic ills, with assurance of complete cure in unselected cases."
- 31 Scientology
The Fundamentals
of Thought. "The 9 "Scientology, used by the trained and untrained person improves the health, intelligence, ability

Basic Book of the
Theory & Practice
of Scientology for
Beginners" (1956)

behavior, skill and appearance
of people."

- 10 "It has been found that persons can be processed (drilled) in Scientology exercises and can be made well of many illnesses. . . ."
- "Tens of thousands of case histories (reports on patients, individuals records) all sworn to (attested before public officials) are in the possession of the organizations of Scientology. No other subject on earth except physics and chemistry has had such gruelling testing (proof, exact finding). Scientology in the hands of an expert (Auditor) can cure some 70% of Man's illnesses (sicknesses).
- 11 "Scientology does things for people where nothing has been done before. It makes people well from illnesses which were once considered hopeless. It increases their intelligence it alleviates burns received from Atomic Bombs. Scientology is the only specific (cure) for radiation (atomic bomb) burns. Scientology processing given to persons burned by radiation can alleviate the majority of the difficulty. This is true even when the person who is treating (auditor) is not completely trained."
- 51 [Scientology can be used in the eradication of physical illness deriving from mental states and improvement of intelligence] "Scientology is alone in its ability to successfully eradicate those psycho-

- somatic ills to which it is addressed."
- 37 **Scientology: The Evolution of a Science** by L. Ron Hubbard
"First Published May, 1950"
- This pamphlet is virtually identical to Government Exhibit 29, *supra*, **Dianetics The Evolution of a Science**, "copyright 1958. There are two changes: Government Exhibit 37 uses the word **Scientology** where No. 29 uses the word "**Dianetics**" and No. 37 uses the word "**norm**" in certain instances where No. 29 uses the word "**engram**."
- 39 **Advanced Procedure 8 and Axioms** by L. Ron. Hubbard Copyright 1951, Third Edition 1957, Re-edited 1957 by Kenneth D. Barrett D. Scn.
- Running 'determinism' as an emotion, whether to see or to get rid of a psychosomatic illness, produces broad results."
- "The difference between homo sapiens and homo novis is that homo sapiens is uniformly using a service facsimile or the whole chain and does not realize that he is using it but explains it as disease or mental illness or psychosomatic illness, while homo novis is not using the service facsimile and knows what he can occasion with himself.
- "In relative skilled hands it is a 25 to 50 hour process to advance a homo sapiens to a homo novis."
- 11 [Psychotic cases can be cured by auditor.]
- 15-16 [By "running" emotion, the sources of psychosomatic illness are de-sensitized, so that they do not further concern the pre-clear.]
- 21 ["Sevice facsimile" results in hysterical deafness, blindness, colds "any chronic somatic."] "The main goal of the auditor is to locate and release service facsimiles for this lifetime."

- 22 "The neurotic case is therefore entered with the mechanism of stripping a present-time problem at the point of Act Four. . . .

"Resolving the present-time problem makes a better homo sapiens. It does not much advance a case in view of how far that case can be advanced. However, a clever and quick auditor could probably make his fortune using only this technique and by it prevent divorces, cure colds, save jobs, accidents and illnesses."

- 43 "PSYCHOSOMATIC ILLNESS. A term used in common parlance to denote a condition, 'resulting from a state of mind. 'Such illnesses account for about seventy percent of all ills, by popular report. Technically, in this science, a chronic or continuing painful facsimile to which the pre-clear is holding to account for failures. Arthritis, bursitis, tendonitis, myopia, astigmatism, bizarre aches and pains, sinusitis, colds, ulcers, migraine headaches, toothache, poliomyelitis deformities, fatness, skin malformations are a few of these legions of chronic somatics. They are traceable to service facsimiles."

40 Child Dianetics
Dianetic Processing for Children
(1951)

- 11 [Reactive mind] "is the root of all our psychosomatic ills."
- 12 "The individual whose reactive mind bank no longer contains any aberrative incidents is known in dianetic terminology as a 'clear.' But a person who is still undergoing dianetic processing — either for relief of psychosomatic pain or discomfort or with the goal in mind of becoming clear — is called a 'pre-clear.' "

- 36 [Processing can be used to treat a child who catches colds, has asthma, "gets very ill."]
- 43 [Formal auditing may be necessary for seriously disturbed children.]
- 44 "The pre-clear is a young boy, age 7. He was referred to the auditor for the specific purpose of trying to discharge a chronic somatic, asthma."
- 66-68 [Marie, age 13 was brought in for processing because she seemed backward in studies and in her association with other children; she had constant sore throats, and colds.] "Eight months later she was among the top four in her classes, and very active in dramatics and sports. Her mother reported that to her knowledge Marie had not had a cold since she had left off processing."
- 72 "If a child is happy in his environment, well adjusted to those around him, pursuing a successful child's life, perhaps it is best to leave well enough alone and do no dianetic processing beyond a little straight-line memory work occasionally to blow lock, and the running of pleasure moments to relieve the tedium of long train or auto trips
- "But when a child shows unhappiness, or suffers from chronic somatics such as asthma, hay fever and other allergies, or has any other indication of sub-optimum function, then there is a place for dianetic processing.
- 75 ["Chronic somatics" include vomiting, allergies, hay fever, asthma, bronchitis, retarded speech, stuttering.]

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| 87 | [L. Ron Hubbard] "had resolved mental aberration and psychosomatic illness and the basic causes of human behavior." | |
| | "People began to get well who had been 'hopeless case' to medicine and psychiatry." | |
| Back Cover | "From Funk and Wagnall's New Standard Dictionary, Supplement No. 5. | |
| | "dianetic noun. A system for the analysis, control and development of human thought evolved from a set of coordinated axioms which also provide techniques for the treatment of a wide range of mental disorders and organic diseases: term and doctrines introduced by L. Ron Hubbard, American Engineer." | |
| 41 | Hubbard Chart of Human Evaluation, and Dianetic Processing. | <p>Column D is "Psychiatric Range" with a range from "psychotic," through "Neurotic" to "normal" and "high normal". Column E is "Medical Range" with a range from "dead" through "chronically ill," "severe sporadic illnesses," "resistant to infection and disease," to "near accident proof, no psychosomatic ills, nearly immune to bacteria."</p> <p>Column A is entitled "Tone Scale." Title B, headed "Dianetic Evaluation" lists "MEST Clear" opposite the highest entry in the medical range.</p> |
| 43 | L. Ron Hubbard's PAB's Book III 1956 | <p>3 and 4</p> <p>17</p> |
| | | <p>See Exhibit 17</p> <p>"For to my hand is a document written to me by one of our auditors concerning a woman who had remained senseless for three months following an accident. Her husband was desperate and desired a Scientologist to do what he could to return this woman</p> |

to consciousness. The Scientologist did so and made excellent progress simply by putting the woman into communication by hand pressures. . . . The terrible condition of her body bettered and when she was returning to the world of speech and action, the medical doctor in charge of the hospital who heretofore had granted grudgingly, on the husband's persuasion, interviews between the Scientologist and the patient, seeing the improvement, turned on the Scientologist and forbade him to touch the patient or see the patient or have anything more to do with the patient even though he could find nothing in the case but improvement had occurred.

"The Scientologist was turned out of the hospital and a few weeks afterwards the woman, relapsing into the apathy of unconsciousness, died. We will not charge this medical doctor with murder. We will only charge him with ignorance and barbarism."

25 "IMPORTANT: IN PROCESSING PSYCHOTICS AND NEUROTICS OF WHATEVER DEGREE OR THOSE HAVING PSYCHOSOMATIC AILMENTS OF ANY TYPE, USE ONLY OPENING PROCEDURE, 8-C, EACH PART, UNTIL THE PERSON IS SURE WHO IS DOING IT. USE ONLY OPENING PROCEDURE, SOP 8-C, UNTIL THE CASE IS FULLY SANE. USE NO OTHER PROCESS OF ANY KIND."

85-86 [Auditors treat psychotics with processing.]

90 A.C.C. Clear Procedure by L. Ron

2

"For processing to clear, Hubbard Guidance Center, 1812 - 19th St. N.W. Washington 9, D.C."

Hubbard (1958) E-Meter referred to, e.g., at pages 9 and 17.

- 5 "We are not today in the area of thousands of hours, however. We are in the area of hundreds of hours in any case, sane or insane. I cite an example: a woman suffering from a post-partum psychosis was audited 600 hours on CCH-1, 2, 3, 4 before she turned sane long enough for the auditor to snap off the case the valence of her dying brother, at which moment she turned stably sane."

[Processing to clear takes minimum of 75 hours of auditing, probable maximum of 1,000 hours.]

- 9 [E-Meter used to find present time" problems.]
- 17 "The E-Meter is used to locate a stuck object. [a lock]"

ABILITY MAGAZINE

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|----|--------------------------------------|-----|---|
| 9a | This Magazine (Approximately 1955) | 1 | "Demand plainly and get routinely the unconditional surrender of engrams, aberrations, barriers, spaces, energies, to your command." |
| | | 3 | [Processing improves I.Q.] |
| | | 5 | ["Dianetics: The Modern Science of Mental Health" had as its thesis that two people working together with processes could improve their health and I.Q.] |
| 9b | Ability Minor 1 (Approximately 1955) | 3 | [Among hundreds of miracles, a four year old boy's withered arm was restored to size by five hours of processing.] |
| | | 8 | "D.Sc. Chester Maypole is running [ruining?] psychiatrists in the Hollywood area — they can't compete." |
| 9c | Ability Minor 5 (1955) | 1 | [Raise intelligence quotient at least ten points in twenty-five hours of processing.] |
| | Back cover | | [Definition of Dianetics as a system which provides "techniques for the treatment of a wide range of mental disorders and organic diseases."] |
| 9d | Ability Major 1 (1955) | 3 | [Scientology can heal psychosomatic illness, seventy percent of the diseases of man.] |
| | | 5-6 | "We have no more quarrel with a psychologist than we would have with an Australian witch doctor. We have no quarrel with a psychiatrist any more than we should quarrel with a barbarian because he had never heard of nuclear physics. And as for the medical doctor, we know very |

well that modern medical practice, having lately outgrown phlebotomy, has come of age to a point where it can regulate structure in a most remarkable and admirable way. In Scientology we believe a medical doctor definitely has his role in a society just as an engineer has his role in civil government. We believe that a medical doctor should perform emergency operations such as those made necessary by accidents; that he should perform orthopaedics; that he should deliver babies; that he should have charge of the administration of drugs; that his use of antibiotics is beneficial; and that wherever he immediately and curatively addresses structure he is of use in a community. The only place we would limit a medical doctor is in the field of treatment of psychosomatic medicine, where he has admittedly and continuously failed, and the only thing we would ask a medical doctor to change about his practice is to stop taking money for something he knows he cannot cure, i.e., spiritual, mental, psychosomatic, and social ills."

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| 9e | Ability Major 2 (Approximately 1955) | 10 | [A young woman's results from dianetics: improvement in health figure, eyesight, nerves, inferiority complex, pains, hair, complexion.] |
| | | 12-13 | [Processing improves I.Q.] |
| 9g | Ability Minor 4 (Approximately 1955) | 10 | [Parkinson's disease treated with processing, and improved.] |
| 9h | Ability Major 5 (1955) | 5-6 | [Scientology does bring about health and sanity; often, in processing, preclear discards a malady.] |

	Back cover		[Definition of Dianetics; see 9c.]
9i	Ability Minor 6 (1955)	4	[Auditing raises intelligence from fifteen to twenty points during twenty-five hour intensive; most psychosomatic illnesses vanish or reduce during an intensive.]
9j	Ability - This Concerns You (1956)	1	["Ron" will unleash a total wrap-up of Dianetics, its handling of aberration and the Reactive Mind;
		1	Dianetics is filled in at all points where Ron said it was going to have to be filled in.]
9k	Clinical Course Advance (1955)	1	[auditors are involved in mental healing.]
		1-2	[Arthritics, polio sufferers, other psychosomatically ill persons were invited to participate in a research program; the Advanced Clinical Course Unit will work on these people.]
9l	Issue 14 ²	7-8	[Person almost blind; cataracts in both eyes, make able to see in 20-25 hours of processing.]
9m	Issue 15 (1955)	12	[Students in basic auditor's course can be certified as "Practitioner of Spiritual Healing in the Church of American Science. They need these credentials for their protection if they audit."]
9n	Issue 16 (1955)	1	". . . even older processes were obtaining twenty to thirty points gain in intelligence in every pre-clear processed."
9o	Issue 19 (1955)	12-13	[Letter published stating processing improved rheumatoid arthritis.]

²This and the following 9-series exhibits are issues of Ability.

9q	Issue 21 (1956)	12	[Processing of psychotics; success with these processes in each of several cases.]
9r	Issue 24 (1956)	5-6	[Three methods of dissemination; the second method involves processing people with disease, e.g., poliomyelitis. Scientology alleviates condition, without treating illness, but by processing the pre-clear.]
		8	[Monopoly on radiation healing.]
9s	Issue 29 (1956)	2	[Dianetics involves use of Scientology in an application to problems of the human mind — psychotherapy. Dianetics increases dynamic, and "healthy or unhealthy mean simply, dynamic more or dynamic less;" it is a therapy.]
9t	Issue 31 (1956)	9	[Processing changes I.Q.'s and personalities rapidly and greatly at the Hubbard Guidance Center.]
9u 9v 9w	Issues 35, 36, 37	Back cover	[Definition of dianetics; see 9c.]
9z	Issue 40 (1956)	1, 5	[Dianetics has job of handling nuclear fission products and consequences to man.]
9aa	Issue 41 (1957)	1	[At "Radiation Congress", L. Ron Hubbard gave the answer to insanity and psychosis; and new definitions with which auditor can take apart problems of sanity v. insanity in a new way.]
9ab	Issue 43 (1957)	1	[Dianetics removes blocks from brain and clears body of psychosomatic attributes.]
		Back cover	[With Scientology, the I.Q. is raised, the personality is "increased," at the Hubbard Guidance Center.]
9ac	Issue 44 (1957)	1, 4 back cover	[Processing increases I.Q.]

9ad	Issue 45 (1957)	4	[Clearing as given in "Dianetics: The Modern Science of Mental Health is easily obtainable.]
		5	[Processing can undo insanity.]
9ae	Issue 47 (1957)	1	[Scientology can handle hysteria created by radiation.]
		5-6	[Scientology auditing will attain dominance in field of human mind.]
9af	Issue 48 (1957)	2	[Scientology is used in the field of mental disability.]
9ag	Issue 49 (1957)	1	"We can accurately and predictably process a day-old baby , a person in a coma, a catatonic schitz, a no-reality case or a person in very good shape."
9ah	Issue 50	4	"Validated auditor" "could audit a person in a coma or a day-old baby or somebody 10 years shocked in a spin-bin."
9ak	Issue 53 (1957)	2	[Hubbard Guidance Center can raise I.Q.]
		5	[A woman who had pneumonia and then died of a heart attack was a victim of "I haven't time to be audited."]
9al	Issue 54 (1957)	10	[Eyeglasses, nervous twitches, tensions disappear when unwillingness to confront is repaired.]
9am	Issue 55 (1957)	9	[Academy graduate can increase intelligence of patients and heal legally.]
9an	Issue 57 (1957)	1	[Dianetics and Scientology can resolve illness, heal broken limb.]
9ao	Issue 58 (1957)	5	"Plagued by illness? We'll make you able to have good health. Get processed by the finest capable auditors in the world today --- every auditor a D.D."

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| 9ap | Issue 59
(1957) | 7 | [Extract from Rhodesia Herald reprinted, stating that "Science of Survival," together with Tone Scale, which were prepared from observation of tens of thousands of cases, show that people who are eager and enthusiastic seldom suffer from any illness; but persons lower down on the scale are prone to psychosomatics and accidents.] |
| 9aq | Issue 60
(1957) | 2 | "E-Meters for sale . . . a vital part of your Scientology equipment. Early Model Mathison." |
| | | 3 | "Hubbard Guidance Center wagers any old-time Dianeticist reasonable transportation, room rent and fees, that we can get you to a real clear in from 1 to 5 weeks." |
| 9as | Issue 62
(1957)
(on page 9 is an advertisement by a Validated Hubbard Certified Auditor which refers to "latest Model Electropsychometer") | 3 | [We clear; a clear has no psychoses, neuroses and psychosomatic ills; intelligence above norm.] |
| 9at | Issue 64
(1958) | 3 | [Auditors can raise I.Q.; Scientology techniques can correct amnesia.] |
| 9au | Issue 65
(1958) | 6 | [Scientologists and Dianeticists are mental practitioners.]* |
| 9av | Issue 66
(1958) | 3 | [Hubbard Guidance Center is making "Book I Clears." "Book I" is Dianetics: The Modern Science of Mental Health.] |

*/ Exhibit 9au also states, at page 7: "A Real E-Meter!"

"A meter is needed to run clear procedure."

"The Hubbard Electrometer to use the psychophysical detection."

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| 9aw | Issue 67
(1958) | 4 | "We are Clearing people at the Hubbard Guidance Center." |
| | | 7 | [Letter from a seventy-year old lady who was processed, stating that processing improved ability to walk, which had been impaired by a broken hip and improved eyesight without glasses, worn since 9 years old.] |
| 9ay | Issue 69
(1958) | 1 | [Processing will remove psychosomatic difficulties; E-Meter is used in running Clear Procedures and in Clear Testing.] |
| | | 2 | "A Clear registers an exact number of ohms on an E-Meter according to present findings. |
| 9az | Issue 70
(1958) | 2 | [Hubbard Guidance Center clears people.] |
| 9ba | Issue 71
(1958) | 3,
19,
20 | [Hubbard Guidance Center clears people by processing; all auditors there use E-Meters to clear; a clear has no psychoses, neuroses and psychosomatic ills.] |
| 9bb | Issue 71-A
(1958) | 3,
18 | [Hubbard Guidance Center clears people by processing; a clear has no neuroses, psychoses and psychosomatic ills.] |
| 9bc | Issue 72
(1958) | 6 | "We don't care <u>what</u> your problem is, <u>we can clear you</u> at the HUBBARD GUIDANCE CENTER"
"Clear Guarantee: \$5,000" |
| 9bd | Issue 73
(1958)
("E-Meters"
referred to
at page 11.) | 2 | [Hubbard Guidance Center make clears, who are persons without a reactive or unconscious mind.] |
| | | 9 | "In one case a bruise, turned utterly black, and covering this person's entire hip, passed away in 45 minutes of good auditing. . ." |

9be	Issue 74 ("E-Meters referred to at page 11.)	3, 5	[Hubbard Guidance Center clears people, raises I.Q.; clearing gets rid of reactive mind, heals ills of man. A reactive mind can be seen on a lie detector or any skin galvanometer.]
9bf	Issue 75 (1958)	6-7	"The Hubbard Electrometer . . . Specially designed for Clearing. . ."
9bg	Issue 76 (1958)	11	"Be sure you have a Hubbard Electrometer. It's a must if you plan to <u>clear</u> people."
9bh	Issue 77 (1958) (E-Meter referred to at page 12.)	14	["Dianetics: The Modern Science of Mental Health" tells what a clear is, defining a clear as a person without any psychoses, neuroses and psychosomatic ills.]
9bi	Issue 80 (1958)	In-side Front Cover	In reference to the Hubbard Guidance Center: "Clearing is our business."
9bj	Issue 81 (1958)	1	[A clear has no reactive mind; the entire subject of Clear is found in "Dianetics: The Modern Science of Mental Health;" a clear is at Tone 4 on the tone scale.]
9bk	Issue 82 (1958)	1, 3, 5-7	[Reprint of an article in a South African journal. In 1953, Dianetics cured an invalid ill for 12 years, whom doctors could no longer help, and she has never been ill again; it helped a woman with thyroid malfunction, another with blinding headaches, and helped cripples. For the purpose of the article "it is unnecessary to differentiate between the two sciences" (Dianetics and Scientology).]
9bl	Issue 83 (1958)	2, 5	[Hubbard Guidance Center's purpose is to clear people. Auditors can alleviate chronic somatics.]
9bm	Issue 84 (1958)	9-10	[Through processing with an E-Meter, a person's I.Q. went up 43 points; he gained ten pounds; he stood an inch or an inch and a half taller; his hearing improved.]
9bn	Issue 85	7	[The Hubbard Electrometer is the

	(1958)		only approved E-Meter for Clearing (advertisement).]
9bo	Issue 86-M (1958)	3, 4, 15	[Anyone can be cleared by running Dianetic engrams; Hubbard Guidance Center clears people. The Hubbard Electrometer is the only approved E-Meter for Clearing (advertisement).]
9bp	Issue 87 (1959) E-Meter referred to at page 1	5, 8	[A "Mest Clear" is adequately described in Dianetics: The Modern Science of Mental Health. The Hubbard Guidance Center Clears people.]
9bq	Issue 88-M (1959)	2	"We aren't Witch Doctors . . . and we don't tell you what's the matter with you. WE CLEAR PEOPLE Hubbard Guidance Center."
		12	[Hubbard Electrometer, the only approved E-Meter for clearing; a must for Professional Clearing Auditors (advertisement).]
9br	Issue 89 (1959)	2	"Come in and get cleared." [A clear has no reactive mind.]
		12	"Hubbard Electrometer: The only approved E-Meter for Clearing. . . A must for Professional Clearing Auditors."
9bs	Issue 90-M (1959)	8, 12	[Hubbard Guidance Center clears people. Advertisement on E-Meters; see 9 br.]
9bt	Issue 91 (1959)	6, 12	[Excerpt from "A History of Man," stating "Cure up the lame and halt and incompetent with whatever display of technique you need." Advertisement on E-Meter; see 9br.]
9bu	Issue 93 (1959)	2, 8	"BE CLEAR - For information on intensives - write The Registrar, 1812 19th Street, N. W." [Advertisement on E-Meter; see 9br.]
9bv	Issue 94-M (1959)	2, 12	Similar statements to those cited at 9bu.
9bw	Issue 95 (1959)	9, 12	[No known case level can fail to reach engram free Theta Clear, if properly audited. E-Meter is used in testing for Clear.]

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| 9bx | Issue 96-M
(1959) | 1 | [Excerpt from History of Man. Fac-similes show up on E-Meter.] |
| 9by | Issue 97 | 5,
16 | "The first sweeping, low cost attack on mental disability is now under way in Scientology organizations with HAS Co-Auditing courses now beginning on all continents." [Advertisement on E-meter, see 9br.] |
| 9bz
9ca | Issue 98M, 99
(1959) | 12 | [Advertisement on E-Meter see 9br.] |
| 9cb | Issue 100-M | 2 | [Sample changes in I.Q. obtained by auditing at HGC: before 109, after 194.] |
| | | 15 | [Quotes from "Success Congress LP Record "Leadership". An individual processed up to Theta Clear is radiation proof."] |
| | | 16 | Advertisement on E-Meter; see 9br. |
| 9cc | Issue 101
(1959) | 6,
8 | [Theta clearing at Hubbard Guidance Center; advertisement on E-Meter, see 9br.] |
| 9cd | Issue 102 M
(1959)
(Use of E-Meter in processing, referred to at 7) | 1 | [Personality gains in eight-year old boy after thirty-seven and a half hours of processing.] |
| | | 12 | [Advertisement on E-Meter, see 9br.] |
| 9ce | Issue 103
(1959) | 2 | [Personality changes through processing.] |
| | | 4 | "When you process an individual you can change his position on the tone scale; . . .- you can change his basic health. . . |
| | | 5 | [Theta clearing course includes full instruction on E-meter.] |
| 9f | Issue 104 M
(1959) | 6 | [Hubbard Clearing Scientology Course; its purpose is to train an auditor able to make an operating thetan; week 2 of theory, involves The Hubbard Electrometer and E-Meter auditing.] |
| | | 12 | "Use a meter. . . Lack of meters means lack of Clears. (From HCO |

- Bulletin of Aug. 7, 1959 by LRH). The Hubbard Electrometer, the only meter specifically designed for Clearing. . ."
[Advertisement]
- 9ch Issue 106 M (1959) 9 "Out of these enfranchised guidance centers we hope will grow clinics, hospitals and sanitoriums. . ."
- 12 "The Hubbard Electrometer is the only E-meter designed specifically for Clearing by Scientology processing." (advertisement)
- 9ci Issue 107 (1959) 8 [Advertisement for E-Meter; see 9ch.]
- 9cj Issue 108 (1959) 1 Scientology research "has already paid off to the extent of furnishing an entirely new theory of illness and a brand new prevention of illness in human beings."
- 12 Advertisement on E-Meter, similar to 9ch.
- 9ck Issue 109 (1959) (The "New E-Meter Book", "The Hubbard Electrometer", by John Sanborn, advertised on page 2.) 5 (Seminars at a Scientology Congress remove permanently some lifetime psychosomatic problems.)
- 8 Advertisement on E-Meter, similar to 9ch.
- 9cl Issue 110 (1959) 3 ["Child psychosomatic process; "assists" for injured child.]
- 8 Advertisement on E-Meter, similar to 9ch.
- 9cm Issue 113 (1960) 3 [Every Scientologist can clear, using an E-Meter.]
- 9cn Issue 114 (1960) 3 ". . . Scientology, by altering human energy, has duplicated any miracle of yesteryear in healing."
- 4 "In a few hours Scientology can make the lame walk, the blind see."
- 6 "A burn or bruise or even sprains or breaks heal much more swiftly with Scientology assists."

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| 9co | Issue 115
(1960) | 7 | [From descriptions of books: "Scientology uses the methodology of mathematics and nuclear physics to create an exact science of the human mind — a field previously unknown." How to use the E-Meter, the instrument which takes the unknown out of auditing.] |
| 9cp | Issue 116
(1960) | 4-5 | "You can enjoy the state of clear as described in Chapter Two of 'Dianetics: The Modern Science of Mental Health.'" |
| 9cq | Issue 117
(1960) | 4 | Dianetics "contains a therapeutic technique with which can be treated all inorganic mental ills and all organic psycho-somatic ills, with assurance of complete cure in unselected cases." [This is a reprint of Chapter I of Dianetics: The Modern Science of Mental Health, "basic book of Dianetics and Scientology."] |
| 9cr | Issue 118
(1960) | 7 | "Get Clear at the Hubbard Guidance Center |
| | | 8 | "We are masters of I.Q. and ability." |
| 9cs | Issue 119
(1960) (Meter referred to at 9) | 8 | [A boy of eleven who was backward at school, unable to hold his own with other children, easily and frequently upset emotionally, was shy and withdrawn, and attended a speech class, was processed with the result that: the boy was transferred to a class of normal children; his physical coordination and speech improved considerably; his relationships with other children improved. |
| 9ct | Issue 120
(1960) (E-Meter practice referred to at page 7 in describing "the Hubbard Electrometer".) | 14 | [Letter from a Medical Doctor, one year after he had received 25 hours of processing: "... my endurance seems unlimited, I am able to be on the ball 12 to 15 hours each and every day; I have not had a sick moment during the past year. And so far as I can evaluate my physical and mental condition has continued at a high peak since my auditing last November." |

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| 9cu | Issue 121
(Oct. 1960) | 10 | [Processing by Hubbard Guidance Center improves I.Q. has reduced nervousness, relieved anxiety.] |
| 9cw | Issue 123
(Dec. 1960)
(Reference to Hubbard Electrometer, at page 11) | 4-
5 | [Processing improves I.Q. and body disability including eyesight, pains in back.] |
| 9cx | Issue 124
(January 1961) (Reference to Hubbard Electrometer, at page 11) | 11 | [Person processed becomes a release or clear, who is unaberrated, whose intelligence quotient is improved. (Excerpt from "Science of Survival.")] |
| 9cy | Issue 126
(Mar. 1961)
(Reference to Hubbard Electrometer at page 8) | 1 | "A Release is precisely defined as one who has no psychotic or neurotic tendencies of any kind and has a certainty that he will get no worse." |
| 9cx ¹ | Issue 127
(Apr. 1961) | 7 | [Scientology makes whole classes of backward children averagely bright; it discovered the basic cause of disease. "The results of Scientology are easily demonstrable claims that can be duplicated by competent practitioners at will using Scientology, principles, correctly." The goal of Scientology processing is to make a person clear of all aberration.] |
| 9cy ¹ | Issue 128
(May 1961) | 6 | [Hubbard Guidance Center processes people to a state of Release, and issues a certificate on their attaining that level.] |
| 9cz | Issue 129
June 1961 | 4
10 | "The E-Meter never lies." [Processing at Hubbard Guidance Center produces state of clear and of release.] |
| 9da | Issue 130
July 1961
E-Meter referred to at page 4, 10, 11 | 3 | [Processing can produce release.]
"Every promise ever made for Dianetics and Scientology is about to come true." |

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| 9db | Issue 131
Aug. 1961
E-Meter
referred to
at page 5 | 1 | "The psychologist could not change intelligence quotient or personality at will. The Scientologist can. The psychologist could not restore sanity and happiness to the insane. The Scientologist can. The medical doctor could not heal without consequence, when he could heal at all. The Scientologist can." |
| 9dc | Issue 132
Sept. 1961 | 10 | [Auditing treated infants' cleft palate, and a premature infant, whom doctors had little hope for.] |
| 9dd | Issue 133
Oct. 1961
E-Meter
referred to
at page 11; E-meter books, at page 2. | 11 | [Scientology Congress will teach how to remove preclears psychosomatics.] |
| 9de | Issue 134
Nov. 1961
(E-Meter on cover) | 10 | "Modern auditing (except for CCHs, for which no meter is used) can only be done with an E-meter. . ." |
| 9df | Issue 135
(Dec. 1961)
(E-Meter on cover) | 4-
5 | [It is a vital fact in clearing that only the British Mark IV (or improved) E-Meter is suitable for clearing, and the 1957 blue American meter L. Ron Hubbard supervised in construction. 1958-59-60 and 61 American meters are wholly unsuitable.] |
| 9dg | Issue 136
Jan. 1962
E-meter books
referred to at
page 11. | 4 | "We don't expect you [Scientologists] to hang up a shingle as a doctor and have a private practice. We'll respect you if you do." |
| 9dh | Issue 137
Feb. 1962 | Back
Page | "British Mark IV E-Meters are used exclusively in the HGC. Prepare yourself for high scale clearing." |
| 9di | Issue 138
(1962) | 8 | By closed circuit television of auditing demonstration, Scientology students could watch "every move of the auditor and preclear, hear every word that is said, and important in modern techniques of auditing, observe every quiver of the E-meter needle." |

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| 9dj | Issue 139
1962
E-Meters
referred to
at page 2. | 8-
9 | [Engram running] |
| | | 12 | [The "old" data of Dianetics and Scientology in its "new" and most effective application. Scientology doesn't change.] "Clearing to full dynamic stable Clear is beginning to occur. . ." |
| 9dk | Issue 140
(1962) | 15 | [Scientology processing improved children's I.Q.] |
| | | 18 | "The British Mark IV E-Meter is the ONLY E-Meter which may be used in HGCs or in Academies of Scientology, and its use is imperative by any Auditor who wishes to audit really effectively." |
| 9dl | Issue 141
September
1962 | 3-8,
13,
(Particu-
larly pg.
6.) | [A person cannot be cleared until his "witholds" are pulled. The E-Meter is necessary in auditing to pull withholds.] |
| 9dm | Issue 142
(October
1962) | 12 | URGENT
Healing Promotion
... We have resolved healing.
Clearing, of course, resolves it,
and we can clear." |
| | | 14 | "An Academy of Scientology is the only place on Earth where you learn to make the unwell well, the insane sane and the sane saner." |
| | | 15 | [Student must have own Mark IV E-Meter.] |
| 9dn | Ability 143
(November
1962) | 4 | [In clearing it's necessary to find pre-clear goal. A specific type of needle reaction on the E-Meter will locate a pre-clear's goal.] |
| 9do | Ability 144
(December 1962)
(E-Meter referred
to at pages 3, 5.) | 16 | "The psycho-analyst, the psychologist, and the psychiatrist have been guilty of not-delivering. Whatever may be said about Dianetics and Scientology, whatever may be said about me or my enthusiasms, I can assure |

that we and I have delivered. We mean what we say when we write down in a summary of case histories that we have cured so many cases of so-and-so, and we alleviated so many cases of such-and-such. . . ."

9dq	Ability Major 4 1955	Back Cover	[Definition of dianetics, stating that it is a system providing techniques for treatment of a wide range of mental disorders and organic diseases.]
9dr	Ability Minor 3 (1955 approx.)	4	L. Ron Hubbard, by processing made a man walk naturally whose legs would not bend at the joints, who had had a "peglegged" walk.
9dt	Issue 34 (1956)	Back Cover	[Definition of dianetics see 9dq.]
9du	Issue 46 (1957)	8	[Except from report of Team Manager of the 1956 British Olympic Modern Pentathlon Team. Scientology developed mental stamina in the team, so that there were no mental crack-ups as had been the case in former World Championships.]
9dv	Issue 56 (1957)	4	[Hubbard Guidance Center can increase I.Q.]
9dw	Issue 79 (1958)	2	[Hubbard Guidance Centers make clears.]
9dx	Issue 92M (1959)	2	Hubbard Guidance Center clears people.
		16	Advertisement: "HUBBARD ELECTROMETER: The only approved E-Meter for clearing. . . . A must for professional auditors."
10A	Professional Auditor's Bulletin ³ March 1961	5	"If you haven't got an E-Meter, you can't clear people."
10B	August 1961	1	[Basic process to take clear to release and an accurate test for release, using E-Meter.]

³ All publications in 10 series of exhibits are Professional Auditor's Bulletins.

- 10C September 1961 4 "A totally stuck needle [on E-meter] can be freed by processing or by getting off withholds."
- Back Cover A description of E-Meter Essentials 1961, stating: "This book contains everything the professional auditor needs to know about the E-Meter in order to run ALL modern processes . . ."
- 10D October 1961 3 [Lists items which must be known by auditor to accomplish clearing including E Meter Essentials.]
- Back Cover [Description of "E Meter Essentials 1961 and E Meters, stating that the book is thorough coverage of the E Meter in Modern processing, and is the first book in the new "Clearing Series;" and stating that the Hubbard Electrometer is a "sensitive and reliable meter [of] unrivalled technical excellence."]
- 10E November 1961 6 "Auditors who can't run or read a meter. . . can't release or clear anyone."
- 10F December 1961 1-2 [Assessment of preclear's goals is vital; the meter is necessary in assessing for goals.]
- 10G January 1962 1-2 "These steps release people . . .
1. The Johannesburg Security Check, well done (See PAB Magazine of September 1961)"
[This PAB is Exhibit 10C; cf. Exhibit #25, "The only Valid Security Check." The E-Meter is necessary in giving the Security Check.]
- 10H May 1962 Back Cover ". . .there is no substitute for a Mark IV in auditing today. This is not a commercial statement. It is a vital fact in clearing."
- 10I August 1962 3 [Only the Mark IV E meter is sensitive enough to check out a goal.]
- 4 ". . .failure to obtain results from Security Checking and Problems Intensives

lies wholly in the inability to read an E Meter."

- 9 [Any meter will register body reactions; only the E Meter registers thoughts as well as physical tone, because the soup can made enough skin contact.]
- 10J October 1962 4 "An auditor who [security checks] but cannot read a meter is dangerous because he or she will miss withholds and the preclear may become very upset."
- 9-10 [Sometimes one command made an insane person sane.]
- Back Cover "The British Mark IV is the only approved meter for auditing today. This is NOT a commercial statement. It is a vital fact in clearing."
- 10K November 1962 9 [Security check questions are to be cleared on the meter.]
- 12 ["The New Mark V Goal Finder's Meter"]
- "It is as sensitive to mental response as was the proverbial Princess to the pea under her many mattresses."

ADDITIONAL PUBLICATIONS

The following publications were among the seized literature. They were marked for identification at trial, but were not introduced into evidence at the trial. They have been filed herein accompanying the government's memorandum of points and authorities in support of decree of condemnation.

<u>Government Exhibit No.</u>	<u>Title, Date (Misc. Comments)</u>	<u>Page</u>	<u>Statement</u>
95 (for identification)	The Man Who Succeeds Copyright 1957	2	[Scientology can predictably raise intelligence, permit man to escape from his disabilities.]
96 (for identification)	Scientology The Fundamentals of Thought—Excerpts from the Book (This is a pamphlet ex-	10	"Scientology in the hands of an expert (Auditor) can cure some 70% of Men's illnesses (sicknesses)."

97 (for identification)	cerpt from Exhibit 31 <u>supra</u>) HCO Information Letter of November 27, 1961 The Saint Hill Special Briefing Course	1	"Certainty in and familiarity with the E-meter is as essential for an auditor as it is for him to be in the auditing room."
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[Filed July 7, 1967]

[Caption omitted in printing]

**MOTION FOR JUDGMENT NOTWITHSTANDING
THE VERDICT OR IN THE ALTERNATIVE
FOR A NEW TRIAL**

The claimants in the above-entitled action, through their attorneys Shaw, Pittman, Potts, Trowbridge and Madden and Oscar H. Brinkman, move the Court pursuant to Rule 50(b) of the Federal Rules of Civil Procedure to set aside the verdict rendered herein on April 19, 1967, and the judgment entered thereon on June 28, 1967, and to enter judgment for the claimants, in accordance with their prior motion for directed verdict, on the grounds that: (A) there is insufficient evidence in the record to support the jury's verdict and (B) the government's conduct, prior to the bringing of this action and during the course of its executing the warrant of attachment, was violative of the protective features of the First and Fourth Amendments to the Constitution.

In the alternative, claimants move the Court pursuant to Rule 59(a) of the Federal Rules to set aside the verdict and judgment entered thereon and grant claimants a new trial on the following grounds: (1) the jury which tried the instant case was biased; (2) the Court erroneously submitted the "Labeling" issue to the jury; (3) it was improper to permit Will N. Swain to testify in the manner in which he did; (4) it was error to permit government counsel to question Miss Routsong on matters relating to her religious beliefs; (5) the Court's instruction, permitting the jury to consider early literature in connection with the "intended use" issue, was erroneous; (6) it was error to direct the jury to return a general verdict in this type of case; (7) those government exhibits, which contained markings made by government personnel, should not have been sent to the juryroom; and (8) the jury's verdict was against the weight of the evidence in this case; — all of which are more fully set forth in the Memor -

andum of Points and Authorities attached hereto and made a part hereof.

SHAW, PITTMAN, POTTS,
TROWBRIDGE & MADDEN

/s/ Murdaugh Stuart Madden

/s/ Oscar H. Brinkman

Attorneys for Claimants

[Certificate of Service]

Denied 8/28/67

[Filed October 23, 1967]

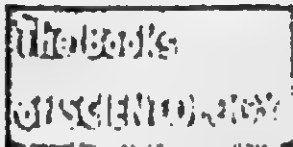
NOTICE OF APPEALS TO COURT OF APPEALS

Notice is hereby given that The Founding Church of Scientology of Washington, D.C., a religious corporation, and the following named other claimants in the above-entitled and numbered action, to-wit: Eunice Ford, Bud Love, Michael Moran, Pem Wall, Wayne Rohrer, Janet Tucker, Helen Hancock, Marguerite Edelstein, D. M. Hoskins, Frodel Bagley, Ann Horner, David Hancock, Anton James, Doris Lambricht, W. S. Gibbons, Harris Angell, J. Angell, Natalie Fisher, Jean Reeve, R. M. Conway, Fred Walker, Fred Payer, G. H. Hancock, H. W. Moore III, R. G. Stevens, S. L. King, A. L. Horner, John J. Gillispie, D. S. Hancock, Paul M. Breedon, Maurin Adkin, J. P. Wooten, Marie Boruck, Werner Behnke, M. V. Hermann, David K. Foster, W. F. Knop III, and Marilyn routsong, hereby jointly appeal to the United States Court of Appeals for the District of Columbia Circuit from the final judgment and decree of condemnation entered in this action on June 28, 1967 in the District Court of the United States for the District of Columbia, the said above-named claimants having filed their "Motion for judgment notwithstanding the verdict or in the Alternative for a new trial" on July 7, 1967 and such motion having been denied by the said District Court on August 28, 1967.

Oscar H. Brinkman,
Attorney for the Founding
Church of Scientology of
Washington, D. C., and for
the other claimants named
above.

[EXHIBIT A to Reply Memorandum of Points and Authorities
in Support of the Government's Proposed Decree of Condemnation,
filed June 20, 1967]

THE FOUNDING CHURCH OF SCIENTOLOGY
1812 15th Street NW Washington DC 20009



DIANETICS:

The Modern Science of Mental Health

by L. RON HUBBARD

\$1.00 Member's price \$4.00

ANOTHER MAJOR TEST
THE TOLERANCE OF HUMAN ANXIETY by L. Ron Hubbard \$1.00 Member's price, \$4.00

HUMAN EVALUATION
SCIENTOLOGY MANUAL by L. Ron Hubbard,
\$1.00 Member's price, \$4.00

HANDBOOKS AND LARGE MANUALS
DIANETICS The Original Theory by L. Ron Hubbard

DIANETICS 5-1 by L. Ron Hubbard

SCIENTOLOGY 8-1-10 by L. Ron Hubbard

THE HISTORY OF MAN by L. Ron Hubbard

HAVE YOU LIVED BEFORE THIS LIFE? by L. Ron Hubbard

HOW TO LIVE THROUGH AN EXECUTIVE by L. Ron Hubbard

ALL ABOUT RADIATION by L. Ron Hubbard

SELF ANALYSIS IN DIANETICS by L. Ron Hubbard

THE HANDBOOK FOR FREELANCE by L. Ron Hubbard

ADVANCED PROCEDURES AND AXIOMS by L. Ron Hubbard

CHILD DIANETICS by L. Ron Hubbard

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THE BOOK OF E-METER DRILLS

THE BOOK INTRODUCING THE E-METER by L. Ron Hubbard

E-METER ESSENTIALS by L. Ron Hubbard

NOTES ON THE LECTURES OF L. RON HUBBARD

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SANITY FOR THE LAYMAN by Reg Sharpe

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by L. Ron Hubbard Popular new edition

THE PROBLEMS OF 2000 by L. Ron Hubbard

SCIENTOLOGY THE FUNDAMENTALS OF

THOUGHT by L. Ron Hubbard

SCIENTOLOGY 8-1-10 by L. Ron Hubbard

START-CHANGE-STOP by L. Ron Hubbard

CLEAR PROCEDURE ISSUE ONE by L. Ron Hubbard

BRAINWASHING (A synthesis of the Soviet manual)

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PAMPHLETS

STRAIGHT WIRE by L. Ron Hubbard

THE AXIOMS OF SCIENTOLOGY by L. Ron Hubbard

FORTRESS IN THE SKY by L. Ron Hubbard

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Order from THE SCIENTOLOGY BOOKSTORE
The Founding Church of Scientology
1812 15th Street NW Washington DC 20009

Please send books as marked above.

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ZIP _____

Send an International Scientology Memorandum
(International Members and those applying for Membership
with this order receive Member's Discount (20%
on books listed over \$1.25))

Enclose check for \$ _____

ENTERED

[EXHIBIT B to Reply Memorandum of Points and Authorities
in Support of Government's Proposed Decree of Condemnation
filed June 20, 1967]

NEW BOOK ORDER FORM

HUBBARD COLLEGE OF SCIENTOLOGY
Saint Hill Manor, East Grinstead, Sussex, England

PAMPHILETS

Ability Straightwire		
Axioms of Scientology <i>by L. Ron Hubbard</i>	2/6	0.50
Fortress in the Sky <i>by L. Ron Hubbard</i>		

POCKET BOOKS & PAPERBACKS

Scientology: A New Slant on Life <i>by L. Ron Hubbard</i>		
Dianetics: Evolution of a Science <i>by L. Ron Hubbard</i>		
The Problems of Work <i>by L. Ron Hubbard</i>		
Scientology: The Fundamentals of Thought <i>by L. Ron Hubbard</i>	6/-	1.25
Scientology 8-80 <i>by L. Ron Hubbard</i>		
Control and the Mechanics of S. C. S. <i>by L. Ron Hubbard</i>		
Brainwashing		

TECHNICAL MANUALS & LARGE PAPERBACKS

The Book of Case Remedies <i>by L. Ron Hubbard</i>		
The Book of E-Meter Drills <i>by L. Ron Hubbard</i>		
The Book Introducing the E-Meter <i>by L. Ron Hubbard</i>		
E-Meter Essentials <i>by L. Ron Hubbard</i>	12/6	2.00
Notes on the Lectures of L. Ron Hubbard		
This is Life <i>by Reg Sharpe</i>		
Ceremonies of the Founding Church		

HARD BACK & LARGE MANUALS

Dianetics: The Original Thesis <i>by L. Ron Hubbard</i>		
Dianetics '55 <i>by L. Ron Hubbard</i>		
Scientology 8-8008 <i>by L. Ron Hubbard</i>		
History of Man <i>by L. Ron Hubbard</i>		
Have you Lived Before This Life? <i>by L. Ron Hubbard</i>		
How to Live though an Executive <i>by L. Ron Hubbard</i>	20/-	3.00
All about Radiation		
Self Analysis in Scientology <i>by L. Ron Hubbard</i>		
Handbook for Preclears <i>by L. Ron Hubbard</i>		
Advanced Procedures and Axioms <i>by L. Ron Hubbard</i>		
Child Dianetics		

MAJOR TEXTS

Dianetics: The Modern Science of Mental Health	35/-	5.00
Creation of Human Ability (both books) <i>by L. Ron Hubbard</i>		

REFERENCE WORKS

Science of Survival	50/-	7.00
<i>by L. Ron Hubbard</i>		

DISCOUNTS

on all Books over 6/- or \$1.25
International Membership - 20%, Fellowship Hubbard College of Scientology - 20%,
Fellowship, plus International Membership - 30%
Franchise Holders - 40%

Tape Discount - Franchise receive 30% discount only if they have both memberships. International plus Fellowship, this is the maximum discount that can be permitted on Tapes.

Clearing Congress Records - no discount except to Fellowship plus International (old Lifetime) Member.
E-Meter discounts 20% to International Members and Franchise Holders.

Dianetic Records, shipping charges: Surface Mail: U.S. \$1.50; Africa, Australia, N.Z., U.K. 5/- (Ster) Airmail

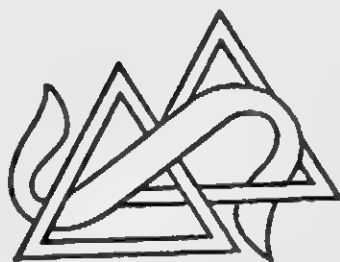
Parcel: U.S. \$3.50; Africa: £1/10/0; Australia, N.Z. £2/12/0 (Ster).

Tapes Airmail Postage Free. Books surface postage paid, except otherwise as stated. Airmail extra.

Items 6/- or \$1.25 under, quantities of 200 - 50% Discount. (Postage extra)

Items over 6/- or \$1.25 in quantities of 100 - 50% Discount. (Postage extra)

JA 276



ORDER FORM

HUBBARD COLLEGE OF
SCIENTOLOGY
Saint Hill Manor
East Grinstead
Sussex, England

COLOURED POSTCARDS

Coloured Postcards of Saint Hill (per dozen)	7/6	1.00
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CHARTS AND SUNDRY ITEMS

Tone Scale (black & white drawing)	7/-	1.00
Tone Scale (coloured)	15/-	2.00
Chart of Attitudes	.. .. .	5/6	0.75
Chart of Human Evaluation (large)	.. .. .	5/6	0.75
Chart of Human Evaluation (small)	.. .. .	3/-	0.50
Creed of the Church of Scientology	.. .. .	3/-	0.50
Auditor Report Forms (approx 100 per pad)	.. .. .	10/-	1.50
Photograph of L. Ron Hubbard (bust)	.. .. .	5/-	1.00
Photograph of L. Ron Hubbard (study)	.. .. .	38/-	5.35

INSIGNIA

Scientology Pin or Lapel Stud	.. .. .	5/-	0.75
Scientology Car Badge	.. .. .	32/6	4.60
HASI Blazer Badge (gold wire)	.. .. .	58/-	8.00
Scientology Scarves (no discount)	.. .. .	40/-	6.00
Scientology Ties (no discount)	.. .. .	25/-	4.00

TAPES AND RECORDS

Clearing Congress Records (Set of six)	.. .. .	8 gns	25.00
Tape per reel (List of Tapes available)	.. .. .	£10	30.00
Dianetic Course Records (Set of two plus HCO Bulletin Dianetic Auditing)	.. .. .	5 gns	15.00

CONFESSIONAL AIDS

Hubbard E-Meter Mark V with leads and charging wire	.. .. .	£50	140.00
Azimuth Meter in leather case	.. .. .	£55	155.00
E-Meter Tone Arm Counters	.. .. .	70/-	10.00
E-Meter Carrier (plastic)	.. .. .	17/6	2.75
E-Meter Case for Mark V (leather)	.. .. .	5 gns	15.00

(DETACH HERE)

Fill in this Order Form marking the number of items required in the space provided

Book	Price	Book	Price

Send with your cheque or money order to: THE BOOK STORE, Hubbard College of Scientology, Saint Hill Manor, East Grinstead, Sussex, England

NAME ADDRESS

Signed
I enclose the sum of
I am/not an International Member, I am/not a Fellow of the Hubbard College of Scientology, I am/not a Franchise Holder, Therefore I have deducted my discount from retail price.
All prices quoted on this Book Order Form are £ sterling, \$ USA.

[Claimants' Exhibits 10(a) and 10(c)]

[Filed Nov. 22, 1967]

CERTIFICATE OF INCORPORATION
of
THE FOUNDING CHURCH OF MAN'S RELIGION,
OF WASHINGTON, D.C.

We, the undersigned, all of full age and citizens of the United States, and a majority being citizens and residents of the District of Columbia, desiring to associate ourselves as a non-profit religious society and corporation pursuant to the Provisions of Chapter 6 of Title 29 of the District of Columbia Code (1951) as amended, and more particularly Sections 601 to 606, both inclusive, of said Chapter, and pursuant to all other applicable laws, do hereby certify as follows:

FIRST, the name or title by which such society, corporation, and church shall be known in law shall be: "THE FOUNDING CHURCH OF MAN'S RELIGION, OF WASHINGTON, D.C."

SECOND, The term for which it is organized shall be perpetual.

THIRD, The particular objects, purpose, and non-profit business of such society and corporation shall be as follows:

To act as a parent church for the propagation of the religious faith known as "Scientology," and to act as a Church for the religious worship of that Faith.

In furtherance of such objects and purpose, the Society and corporation shall conduct religious services for men, women, and children of its congregations, and engage in other activities of a religious and educational nature for the propagation of its Faith. The purpose of such activities shall be to foster the spiritual welfare of its members, recognizing the vital and divinely appointed inter-relationship of mind, body, and spirit of mankind.

In the belief that Man's best evidence of God is the God he finds within himself, and trusting with enduring Faith that the Author of this Universe intended Life to thrive within it, THE FOUNDING CHURCH OF MAN'S RELIGION, OF WASHINGTON, D.C., is founded to espouse such evidences of the Supreme Being and Spirit as may be knowable to Man and by their use and dissemination to bring a greater tranquility to the State and better order and survival to Man upon this planet.

In pursuance of its objective, THE FOUNDING CHURCH OF MAN'S RELIGION, OF WASHINGTON, D.C., shall propagate and disseminate this creed: That God works within Man his wonders to perform: that Man is his own soul, basically free and immortal, but deluded by the flesh; that Man has a God-given right to his own life; that Man has a God-given right to his own reason: that Man has a God-given right to free and open communication; that the Human Spirit is the only truly effective therapeutic agent available to Man; that a civilization can endure only so long as both spiritual and material needs find place within its structure; that a civilization is lost when God and the Spirit are forgotten by its leaders and its peoples; and that Man and the Nations of Man carry with them their own Salvation, and that teachings exist sufficient to effect that Salvation.

The further objective of THE FOUNDING CHURCH OF MAN'S RELIGION, OF WASHINGTON, D.C., is to practice its teachings and beliefs and to propagate, in accordance with its tenets, healing of the sick and suffering by prayer or other spiritual means without the use of drugs or material remedy.

In further pursuance of and not in limitation of the general powers conferred or permitted by law, and to promote the objectives and principles herein set forth, it is provided that this corporation shall also have the following powers:

1. To do all such acts as are necessary or convenient to attain the objects and purposes herein set forth, to the same extent and as fully as any natural person could or might do and as are not forbidden by law or by this certificate of incorporation or by the bylaws of the corporation; and to establish, maintain, assist, conduct, and terminate affiliated, subsidiary, and supplementary organizations whether incorporated or unincorporated.
2. To charter, establish, assist, or conduct churches and congregations, religious schools, educational and guidance centers, and order and societies.
3. To teach, train personnel, and publish books, pictures, pamphlets, documents, tracts, and periodicals, in furtherance of the Creed and Faith described herein.
4. To engage in social welfare work and charitable undertakings; to accept fees and donations for the furtherance of its religious, educational, and missionary objectives and work, and generally to minister to the spiritual and inter-related needs of humanity.

* * *

TWELFTH, The time of commencement of this corporation shall be the date of filing of this Certificate of Incorporation.

IN TESTIMONY WHEREOF, we have this 21st day of July, 1955, hereunto set our hands and seals as incorporators of THE FOUNDING CHURCH OF MAN'S RELIGION, OF WASHINGTON, D.C.

/s/ William H. Young (SEAL)
1826 R Street, N.W.
Washington, D.C.

/s/ Charles B. Keaton (SEAL)
921 19th St., N.W.
Washington, D. C.

/s/ L. R. Hubbard (SEAL)
1845 R Street, N.W.
Washington, D.C.

CERTIFICATE OF AMENDMENT
Changing the Corporate Name of
THE FOUNDING CHURCH OF WASHINGTON, D.C.,
(formerly The Founding Church of
Scientology and The Founding Church
of Man's Religion of Washington, D.C.)

to

THE FOUNDING CHURCH OF SCIENTOLOGY
OF WASHINGTON, D.C.

WE, THE UNDERSIGNED, L. Ron Hubbard and Mary Sue Hubbard, being, respectively, the President and the Secretary of the Founding Church of Washington, D.C., a non-stock, non-profit religious corporation organized originally as The Founding Church of Man's Religion of Washington, D.C., under the provisions of Chapter 6 of Title 29 of the District

of Columbia Code (1951) as amended, do hereby certify as follows:

1. That at a meeting of the Board of Trustees of the Founding Church of Washington, D.C., held at St. Hill, Sussex, England, on September 18, 1959, all trustees having been duly notified or having executed written waiver of notice of such meeting, the following-named trustees, constituting two-thirds of the members of the Board, were personally present and constituted a quorum of said Board, to wit: L. Ron Hubbard and Mary Sue Hubbard.

2. That at said meeting it was unanimously agreed, with the written consent of two-thirds of the Trustees, and by vote in person and proxy of all members of the Board of Trustees, that the certificate of incorporation of the The Founding Church of Man's Religion of Washington, D.C., dated July 21, 1955, and recorded in the office of the Recorder of Deeds of the District of Columbia in Incorporation Liber 0130, Folio 378, as subsequently amended by Certificates of Amendment duly executed, filed, and recorded, changing the name of the said corporation first to The Founding Church of Scientology and then to The Founding Church of Washington, D.C., be now further amended to change the name of the corporation to THE FOUNDING CHURCH OF SCIENTOLOGY OF WASHINGTON, D.C.

* * *

IN WITNESS WHEREOF, we have this 13th day of October, 1959, hereunto set our hands and seals as Trustees and officers of the corporation originally named The Founding Church of Man's Religion of Washington, D.C., and subsequently duly amended to The Founding Church of Scientology and The Founding Church of Washington, D.C., and henceforth to be known as THE FOUNDING CHURCH OF SCIENTOLOGY OF WASHINGTON, D.C., our written consent being attached hereto.

/s/ L. Ron Hubbard (SEAL)
Trustee and President

/s/ Mary Sue Hubbard (SEAL)
Trustee and Secretary

* * *

[Claimants' Exhibit 4]

The Church of Scientology CREED

We of the Church believe:

That all men of whatever race, color or creed were created with equal rights.
That all men have inalienable rights to their own religious practices and their performance.
That all men have inalienable rights to their own lives.
That all men have inalienable rights to their sanity.
That all men have inalienable rights to their own defence.
That all men have inalienable rights to conceive, choose, assist
and support their own organizations, churches and governments.
That all men have inalienable rights to think freely, to talk freely, to write freely
their own opinions and to counter or utter or write upon the opinions of others.
That all men have inalienable rights to the creation of their own kind.
That the souls of men have the rights of men.
That the study of the mind and the healing of mentally caused ills should not
be alienated from religion or condoned in non-religious fields.
And that no agency less than God has the power to suspend or
set aside these rights, overtly or covertly.

And we of the Church believe:

That man is basically good.
That he is seeking to survive.
That his survival depends upon himself and upon his fellows,
and his attainment of brotherhood with the Universe.

And we of the Church believe that the laws of God forbid Man:

To destroy his own kind
To destroy the sanity of another
To destroy or enslave another's soul
To destroy or reduce the survival of one's companions or one's group

And we of the Church believe:

That the spirit can be saved and
That the spirit alone may save or heal the body.

FILED

NOV 22 1957

ROBERT M. STEARNS, Clerk

[Claimants' Exhibits 12 and 12(a)]
[Filed Nov. 22, 1967]

THE ACADEMY OF SCIENTOLOGY
of
The Founding Church of Scientology,
of Washington, D.C.

CONTRACT

Washington, D.C.
March 18, 1959

It is hereby agreed by and between Taylor Quinn of 5809 37th St., Arlington, Va. (who represents himself to be over 21 years of age and to be under no legal disability), and The Founding Church of Scientology of Washington, D.C., a non-profit corporation, operating through its agency, THE ACADEMY OF SCIENTOLOGY (hereinafter referred to as "The Academy"), as follows:

In consideration of the payment of fifty dollars (\$50.00) by cash, The Academy is to furnish instruction and training in Scientology, to the extent of 2 weeks commencing Mar. 23, 1959.

The Academy may require preliminary tests.

It is understood and agreed that the work of The Academy is based upon Scientology, which I know to be a spiritual and religious guide intended to make persons more aware of themselves as spiritual beings, and not treating or diagnosing human ailments of body or mind, and not engaged in the teaching of medical arts of sciences, and not granting scholastic degrees or furnishing accreditation toward the acquirements of college, university, or scholastic degrees. The Academy will, however, upon completion of studies and after examinations and proof of satisfactory acquirement of the principles of Scientology, issue written evidences of the acquirement of knowledge thereof.

This contract, which embodies the entire agreement between the parties hereto, no oral agreement

being recognized or existing, shall come into being and shall have full force and effect when accepted on behalf of The Academy by its Registrar and its Director of Training.

/s/ Taylor M. Quinn

[Seal]

/s/ Marilyn Routsong
Witness
Address

/s/ Marie Aberegg
Witness
Address

Accepted: For THE ACADEMY OF SCIEN-
TOLOGY

Agency of The Founding Church of
Scientology of Washington, D.C., a
non-profit religious organization

By /s/ Marie Aberegg
Registrar

and by /s/ John Fudge
Director of Training

RELEASE

Washington, D.C.
March 1959

In partial consideration of the agreements of HUBBARD GUIDANCE CENTER (for the Academy of Scientology of The Founding Church of Scientology of Washington, D.C.) to accept me for training, education and/or processing, it is hereby understood and agreed, in addition to and supplementing any and all other agreements separately expressed in writing (no oral agreements being valid or recognized), that I, the undersigned, being over 21 years of age and under no legal disability, do hereby fully and without reservation or duress release each and all of the above named organizations and corporations, and any

and all employees, officers, staff members, or associates thereof from any and all liability for any consequences resulting from training, education, or processing practices or methods used by such organizations and applied by them or their personnel; and I understand fully and completely that the purpose of said organizations and personnel are based upon the practice of Scientology, which I know to be a spiritual and religious guide intended to make persons more aware of themselves as spiritual beings, and not treating or diagnosing human ailments of body or mind, and not engaged in the teaching of the medical arts or sciences, and not granting scholastic degrees or furnishing accreditation toward the acquirement of college, university, or scholastic degrees.

I certify that I have read and fully understand the foregoing, and that I am signing this release of my own free will and accord.

/s/ Taylor M. Quinn
[Seal]

Witnessed:

/s/ Marie Aberegg
address

/s/ Marilyn Routsong
address

THE FOUNDING CHURCH OF SCIENTOLOGY

Academy of Scientology Hubbard Guidance Center

I have not been confined to a mental hospital or psychiatric ward nor have I been under the care of a psychiatrist or psychologist.

Explain if false: True False

I have not submitted my body to shock therapy, either electric or drug.

Explain if false: True False

I have not taken or had administered to me any of the new "miracle" drugs such as LSD, tranquilizers, "Happy Thought" pills, etc.

Explain if false:

☒ True ☐ False

I am not addicted to the use of drugs (benzedrine, marijuana, alcohol, heroin, cocaine) or any other stimulant or depressant.

Explain if false:

☒ True ☐ False

I am not and never have been a member of the Communist Party nor affiliated with any activity whatsoever sponsored by the aforesaid Communist Party.

Explain if false:

☒ True ☐ False

I have read and fully understood the foregoing statements and understand that if I have answered any of them falsely immediate dismissal from training or processing may occur without refund.

/s/ Taylor M. Quinn

/s/ Marilyn Routsong
witness
address

/s/ Marie Aberegg
witness
address

[Filed Oct. 1, 1958]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

D. C. 10 - 58

v.

An article of drug consisting of
2 drums, more or less, containing
a total of approximately 21,000
tablets, in bulk 11 etc.

DEFAULT AND
DECREE OF
CONDEMNATION

as fully described in caption
of the libel herein

DEFAULT AND DECREE
OF CONDEMNATION

1. On the 7th day of May, 1958, a libel of information against the above described article was filed in this Court on behalf of the United States of America by the United States Attorney and the Assistant United States Attorney for this district. The libel alleges that the article proceeded against is an article of drug which was shipped in interstate commerce and the aforesaid article (in bulk and as repacked) was adulterated when introduced into, while in, and while held for sale after shipment in interstate commerce, within the meaning of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 351(c).

2. That the aforesaid article (in bulk and repacked) was misbranded when introduced into, while in, and while held for sale after shipment in interstate commerce, in violation of said Act 21 U.S.C. 352 (a), in that its labeling, namely, the bulk drum label, contains statements which are false and misleading in that the article is not effective for preventing and treating harmful effects caused by exposure to radio-activity.

3. And the aforesaid article (in bulk and as re-packed) was further misbranded when introduced into, while in, and while held for sale after shipment in interstate commerce, in violation of said Act 21 U.S.C. 352 (a) in that its labeling, namely, the bulk drum label contains statement which are false and misleading as applied to a product which contains less than the declared amounts of Vitamin B-1, Ascorbic Acid, and Iron.

4. Pursuant to monition issued by this Court, the United States Marshal for this district seized said article on May 8, 1958. Said Marshal posted a Notice of the Libel and seizure at the Courthouse door, warning all persons having any claim or interest in said article to be and appear before the Court on the 31st day of May, 1958, to answer said Libel, and no answer having been filed on said return day, and it appearing to the Court that said article was adulterated within the meaning of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 351 (c), and said article was misbranded within the meaning and in violation of the Act, 21 U.S.C. 352 (a) and it further appearing to the Court that said article was at the time of the filing of said Libel as aforesaid, being held in the District of Columbia upon the premises of The Distribution Center, Incorporated, 1812 19th Street, Northwest, Washington, D.C., it is by the Court this 1st day of October, 1958.

ADJUDGED, ORDERED AND DECREED, that said article consiting of

2 drums, more or less, containing a total of 21,000 tablets, in bulk, and

6 bottles more or less, each containing 50 tablets (which were repackaged from the bulk stock) and labeled in part:

(drum)

**** Lot No. 2531 *** Special Anti-Radiation Compound (Dianezenes) Each tablet contains:

6-2/3 mg. Vitamin B-1
100 mg. Nicotinic Acid
100 mg. Ascorbic Acid
6-2/3 gr. Dicalcium Phosphate
200 mg. Iron Reduced N.F.
3-1/2 mg. Pantothenic Acid***
This is a bulk shipment*** Delmar
Pharmaceutical, Inc., Rensselaer, N.Y."

(bottle)

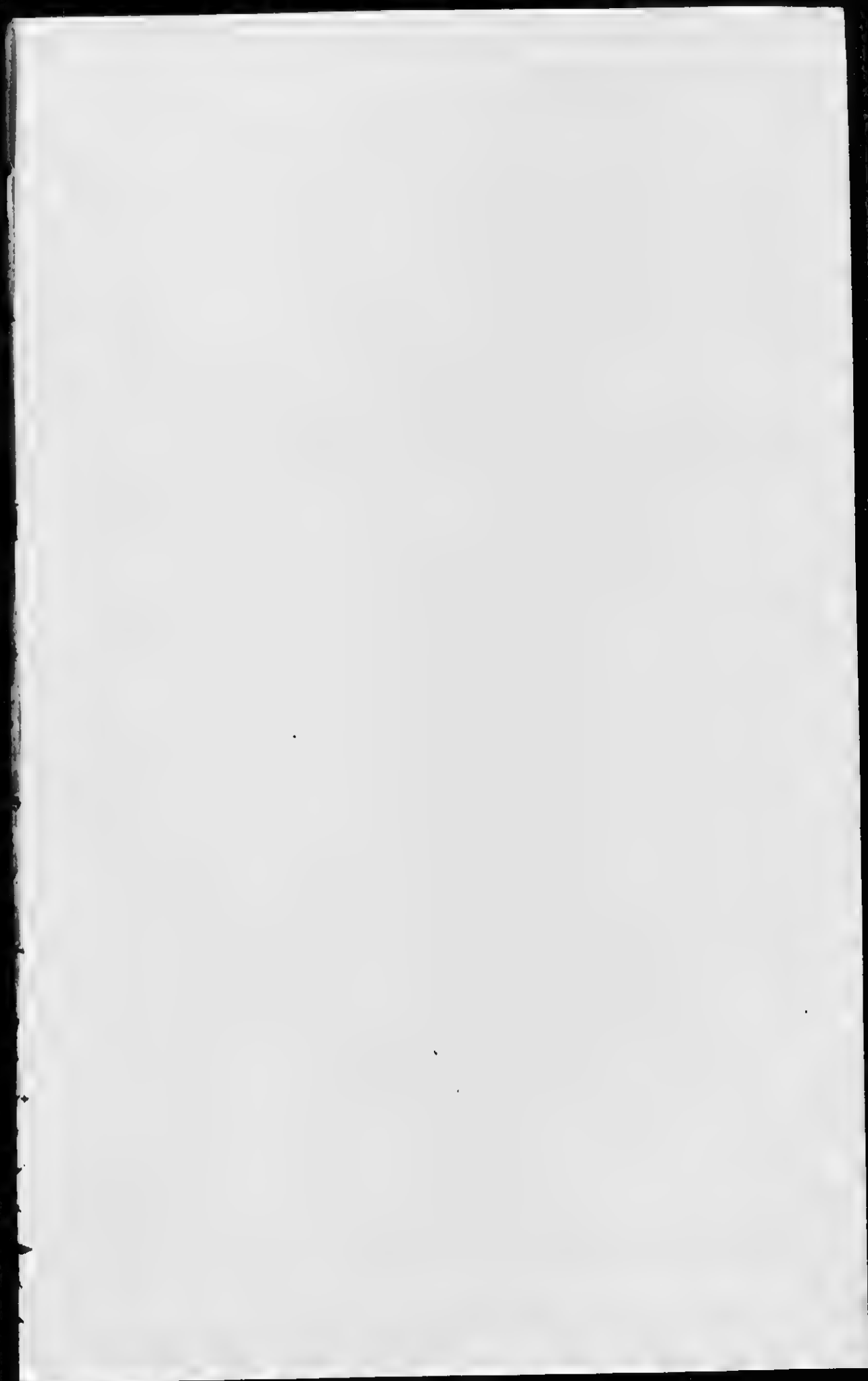
"Dianezen *** Manufactured for the
Distribution Center, Inc., Box 242, Silver
Spring, Maryland *** Each Tablet
Contains:

Nicotinic Acid	100 mg.
Vitamin B-1	6-2/3 mg.
Di-Calcium Phosphate	6-2/3 gr.
Panthothenic Acid	3-1/3 mg.
Ascorbic Acid	100 mg.
Iron	333 mg. ***

now in the custody of the United States Marshal, as
aforesaid is adulterated within the meaning and in
violation of the Federal Food, Drug and Cosmetic
Act, 21 U.S.C. 351 (c), and is misbranded within the
meaning and in violation of the said Act 21 U.S.C.
352 (a), and said article including each and every
tablet is hereby condemned and all of said article
shall be destroyed by the United States Marshal.

AND IT IS ORDERED, that the United States of
America shall pay the costs of these proceedings.

/s/ F. Dickinson Letts,
Judge



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BRIEF FOR APPELLANTS

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

No. 21,483

**THE FOUNDING CHURCH OF SCIENTOLOGY OF
WASHINGTON, D.C., et al,**

Appellants,

v.

UNITED STATES OF AMERICA,

Appellee.

**APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

United States Court of Appeals
for the District of Columbia Circuit

FILED JUL 11 1968

OSCAR H. BRINKMAN

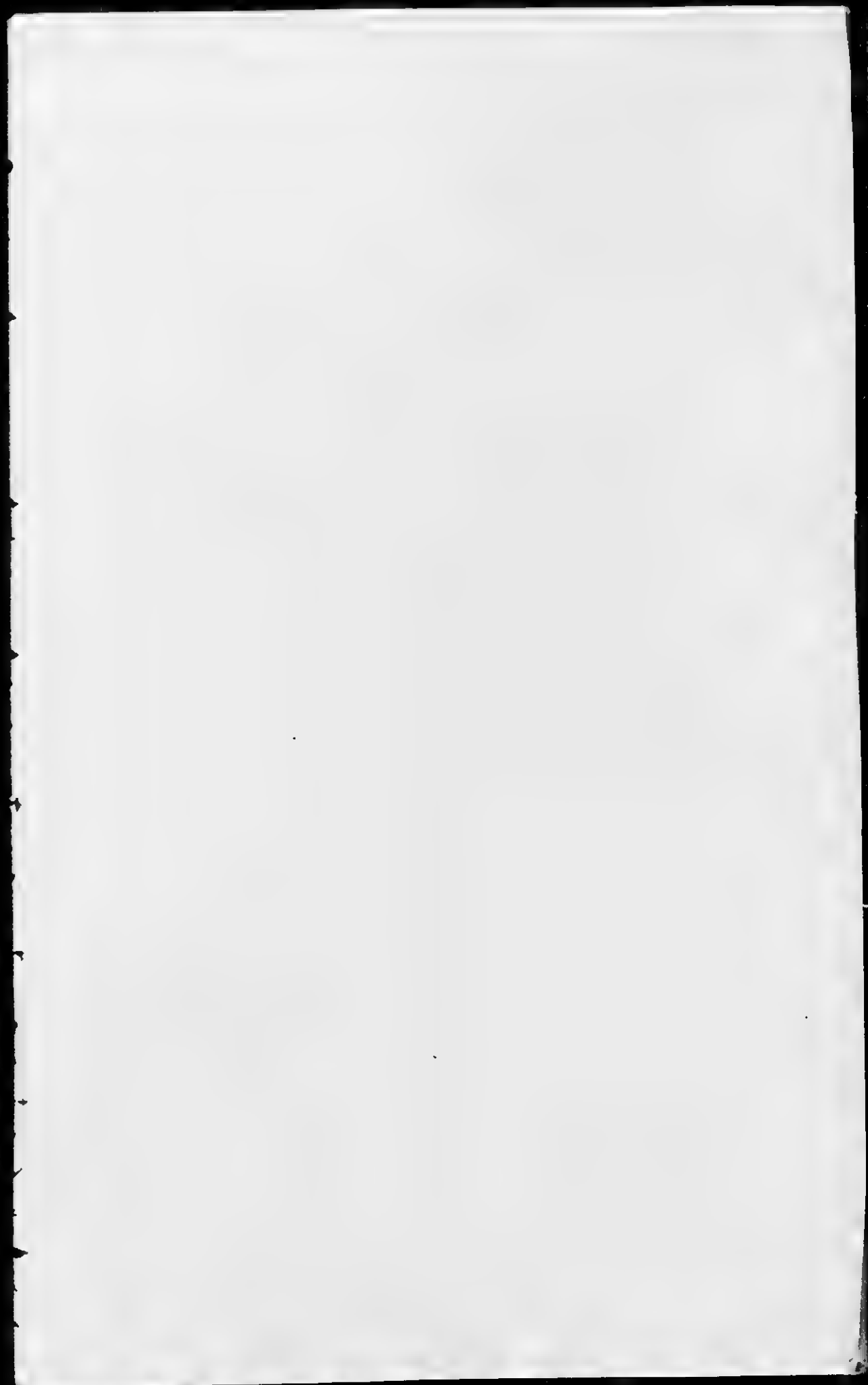
Attorney for Appellants,

957 Warner Building

501 - 13th Street, N.W.

Washington, D.C. 20004

Nathan J. Paulson
CLERK



(i)

STATEMENT OF QUESTIONS PRESENTED

1. May the United States Government forcefully search a Church, its ministers and other staff, religious students, and communicants, and seize part of the Church's religious equipment and literature, under a libel of information and warrant, filed by the U. S. Attorney, charging violation of the Food, Drug & Cosmetic Act but not naming the Church and not supported by oath or affirmation or a showing upon the record of probable cause; forcefully execute the warrant in part by search of and seizure from residential premises of the Church's ministers and staff, interrupt religious counseling and invade confessionals, without violating the first, fourth and fifth amendments of the Constitution?

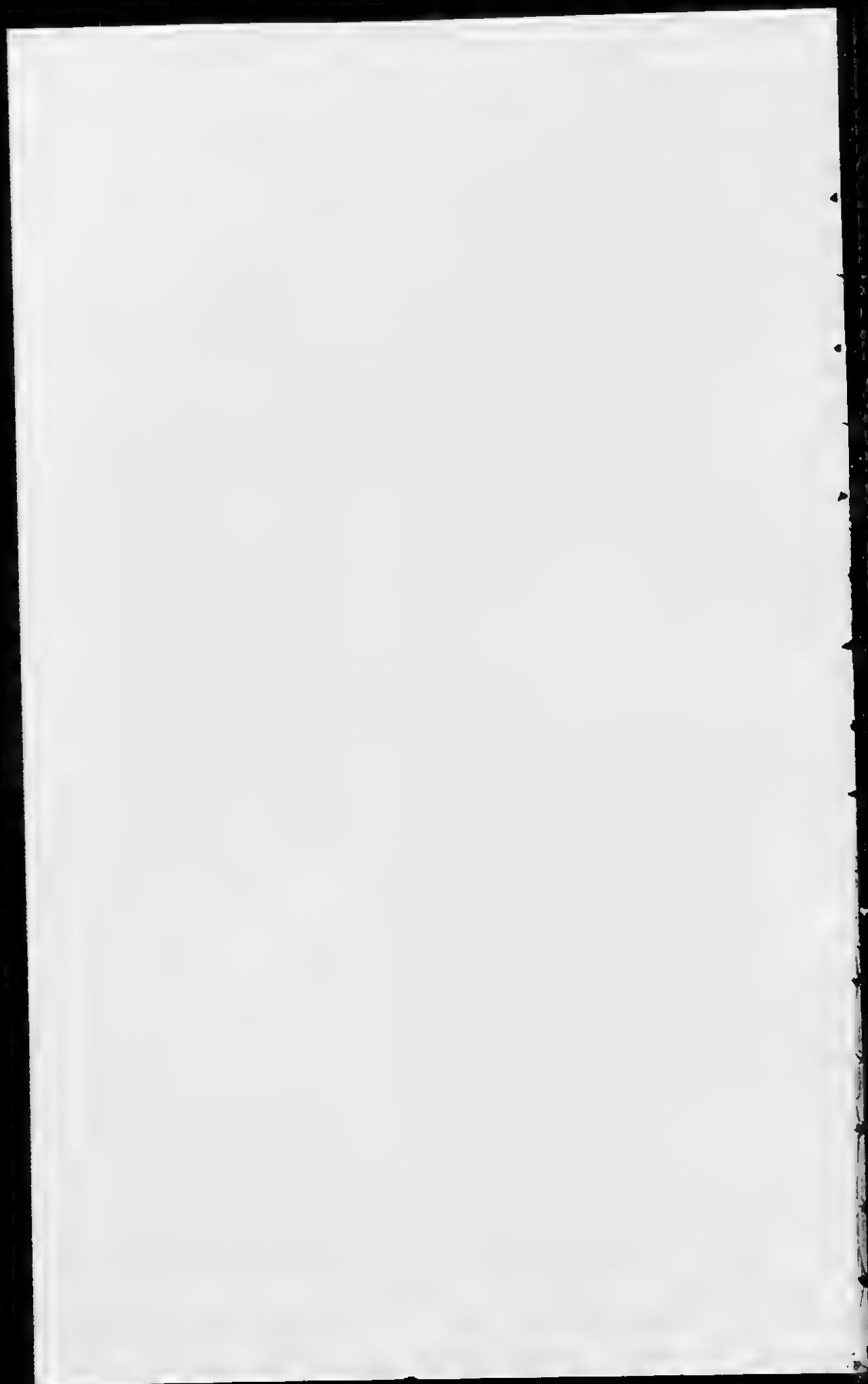
2. May a District Court permit the use in evidence, by the Government, of Church equipment and literature so seized, in a trial to condemn and destroy such equipment and literature?

3. May the government place an undercover agent or spy in the Church organization, prior to the search and seizure, use information obtained by him, and refuse the claimants access to his reports?

4. May a Church which has as a part of its creed a tenet that "The Spirit can be saved and that the Spirit alone may save or heal the body," lawfully use as an aid in its confessional procedure an instrument scientifically designed to indicate spiritual and emotional areas and responses, without violating the Food & Drug Act, the law of the District of Columbia permitting healing by prayer or spiritual means?

5. May the books and other religious literature of a Church be condemned and destroyed by the government without any statutory authority?

6. May a verdict and judgment be sustained that are based upon irrelevant, incompetent, insufficient, and prejudicial evidence?



(iii)

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IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21,483

THE FOUNDING CHURCH OF SCIENTOLOGY OF
WASHINGTON, D.C., et al,

Appellants,

v.

UNITED STATES OF AMERICA,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLANTS

JURISDICTIONAL STATEMENT

This is an appeal from a judgment and Decree of Condemnation by the United States District Court for the District of Columbia (under the Food, Drug and Cosmetic Act, 21 U.S.C. 301, *et seq.*) after the verdict of a jury.

Appellee had seized by process, pursuant to a libel of information and warrant, alleged devices and literature under 21 U.S.C. 334, which were thereafter condemned and

ordered destroyed, with a stay granted pending disposition of an appeal to this Court. Appellants invoked the jurisdiction of the District Court, as claimants of the seized property, under 21 U.S.C. 334(b).

This Court has jurisdiction of this appeal under 28 U.S.C. 1291.

STATEMENT OF THE CASE

This case involves a raid upon a church by U. S. Government agents of the Federal Food and Drug Administration and a force of United States Marshals, and their seizure from the appellant church and its affiliated organizations, as well as from the other appellants—the church's ministers, staff and students of the church school—of a large number of the church publications and other literature and also more than a hundred small instruments designated as Hubbard E-Meters (J.A. 1).

The appellants in this case are the church (including its affiliated religious school and other organizations for religious teaching and the distribution of church literature) and the individuals in attendance from whom such literature and the meters were taken by the Marshals.

The raid on the church and the seizure took place on January 4, 1963. On that date the then United States Attorney for the District of Columbia filed with the United States District Court for the District of Columbia a pleading entitled "Libel of Information" which was docketed in the court as No. DC 1-63 (J.A. 1). The libel was in the form of an action of the United States of America vs. "An Article of Device Consisting of an Undetermined Number of Devices Labeled in Part 'Hubbard Electrometer' or 'Hubbard E-Meter' and Variouslly Labeled 'For Use in Scientology' or 'For Use in Scientological Processing' * * * and accompanying as labeling for the article an undetermined number of items of written, printed or graphic matter on the premises of the Distribution Center, Inc., 1812 - 19th Street, N. W., Washington, D. C., which items are used for promoting sales

of the article and sales of services with the article and consist of the following."

There followed on the title and subsequent pages of the libel designations of 21 pamphlets and other publications by the titles or description thereof. The libel, *which contained no oath or affirmation by the United States Attorney or his Assistants* who also signed it, alleged that it was filed by the United States of America, and prayed seizure and condemnation of a certain article of device in accordance with the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*).

In substance, the libel averred that the meter is a device within the meaning of 21 U.S.C. 321(h) and is misbranded in commerce within the District of Columbia in that the labeling contained statements which represent, suggest, and imply that the article (meter) is adequate and effective for diagnosis, prevention, treatment, detection and elimination of the causes of all mental and nervous disorders and illnesses such as neuroses, . . . and all psychosomatic ailments, which psychosomatic ailments are represented to include most of the physical ailments of mankind such as arthritis, cancer, stomach ulcers, . . ." and various other ailments listed in the libel. The libel charged that such statements are false and misleading since the article is not adequate and and effective for the diagnosis, treatment, prevention, detection and elimination and causes of the diseases.

The libel further alleged that in addition to the foregoing alleged violation of Section 352(a) of 21 U.S.C. there was a violation of Section 352(f)(1) in that the labeling of the article fails to bear adequate directions for use of the article for the purposes and conditions for which it is intended as represented and suggested in its labeling. The libel stated that the aforesaid article is held illegally within the jurisdiction of the Court and is liable to seizure and condemnation pursuant to 21 U.S.C. 334. The Government, as libellant, prayed "process in due form of law according to the course of this Court in cases of admiralty jurisdiction issue against the aforesaid article; that all persons having any interest

therein be cited to appear herein and answer the aforesaid premises; that this Court decree the condemnation of the aforesaid articles. . .; that the aforesaid articles be disposed of as this Court may direct pursuant to the provisions of said Act."

On the same day the libel was filed, the District Court (by Judge Jones) signed an order (J.A. 6) for issuance of a warrant and "advertising of seizure." Thereupon, a warrant was issued commanding the U.S. Marshal for the District of Columbia to seize "an undetermined number of devices labeled in part 'Hubbard Electrometer' or 'Hubbard E-Meter'" and the church publications listed in the libel.

It is to be noted that neither in the libel nor the warrant was the appellant, the Founding Church of Scientology of Washington, D. C., named, although agents of the Food and Drug Administration who had conducted the investigation leading up to the seizure had visited the premises of the Founding Church of Scientology and were aware that the premises specified in the libel and the warrant, viz., Distribution Center, Inc., the Academy of Scientology, and the Hubbard Guidance Center, were integral parts of the Founding Church of Scientology (Tr. 159-165, 353, 354). Thus, the judge to whom the libel was presented and who issued the warrant of seizure, was not informed by the libel and warrant presented to him for issuance that the books, literature and other property to be seized were those of a church.

There were no affidavits filed with the libel, or the order for issuance of the warrant, supporting the charges or intended as proof of probable cause for the search and seizure. Neither was there any indication in the libel or the warrant that some of the premises to be searched and from which seizures were to be made were occupied as residences by ministers and other staff of the appellant church.

Execution of Warrant.

How the U. S. Marshal and his deputies executed the warrant (on the same day the libel was filed and the warrant

issued) is described in the appellants' Motion to Quash Attachment and Monition, to Require Return of the Seized Property, and to Dismiss the Libel of Information, from which the following is quoted (J.A. 15). (The Motion to Quash was accompanied by 16 affidavits, made a part of the motion.)

"In Obedience to said warrant of seizure the United States Marshal for the District of Columbia and his deputies, accompanied by other agents, servants and employees of the libellant, proceeded to enter the premises mentioned in such libel, and other premises not therein identified by libellant or identified in the warrant by street number, where they informed occupants of the various premises which they illegally entered that 'This is a raid' and proceeded to violate the right of privacy of the individual claimants and entered and searched their private dwellings without their consent or without legal grounds therefor, rifling their possessions, opening and searching the drawers of dressers in their rooms, looking under beds, opening and looking into closets, and laundry bags, forcing open suitcases and briefcases and other possessions of claimants in attempting to locate and seize said articles of device, and requiring claimants to open their portfolios, handbags and briefcases, in order to remove from them printed matter being carried by them, under threat of arrest, and impeding and stopping their free movement, . . . all without a warrant first obtained upon a showing of probable cause for the issuance under oath or affirmation, in deprivation of the rights guaranteed to the claimants under the Fourth Amendment to the Constitution of the United States.

". . . That in connection with the search and seizure as described herein, the United States Marshal, his deputies and other employees of libellant violated the sanctuary of the Founding Church of Scientology, interrupted and interfered with the confessions of its members which were being carried

on, and stopped religious instruction of theological students taking place at the time in and upon some of said premises which were raided as aforesaid, and confiscated for the purpose of destruction, religious books, tracts, pamphlets, manuals and other printed and published matter . . . used by said church for the propagation of its faith and for the instruction of its followers, in violation of the guarantees of the First Amendment to the Constitution of the United States."

Among the affidavits attached to and made a part of the Motion to Quash was that of Anton James who stated in part, upon oath, as follows: (J.A. 20).

" . . . I am a minister of the Founding Church of Scientology of Washington, D. C., and am the book administrator for the Hubbard Communication Office, one of the church's subsidiary organizations located at 1827 - 19th Street, N. W., Washington, D. C.; that I was there about 3:00 P.M., on January 4, 1963, when someone phoned me that there was a raid going on involving church premises; that I went out on 19th Street and saw a crowd gathered in front of the church and its Academy of Scientology at 1812 and 1810 - 19th Street; that I noticed at least eight men in a group, some of whom had cameras, and some had badges of U. S. Marshals; that there were three autos with doors open across the street from the church; some double-parked and I believe marked U. S. Marshal; that there were policemen at the south end of the block at S Street and also blocking Swan Street at its intersection with 19th diverting traffic from entering the block; that there were two uniformed police present, one with gold braid on his uniform; that thereupon I asked some of the group of men who they were and they said U. S. Marshals; that some were on the front steps of 1810 - 19th Street which contains the church offices and is also used as a dormitory or living quarters for theological students of the church's Academy of Scientology, and for religious counseling

purposes; that I asked the men for their names and they refused to give them; that they told me they were raiding the place. . . they were trying to get by our minister, Marilyn Routsong, who was standing in the doorway upstairs, and to enter the room where she had been engaged in religious counseling; . . . that I then asked the Marshals whether they knew they were raiding a church and asked what their religion was; that one of the Marshals replied he was a Catholic and he would raid a Catholic church just as readily if ordered to do it and wouldn't even feel bad about it; . . . that I saw students being stopped in the halls and elsewhere in the church building and having their book bags searched; that I then went into the basement of the church and found Marshals there who were carrying out the church's religious books and pamphlets using some of the books to hold the door open; . . . that I observed some of the Marshals had straps across their bodies which indicated to me that they were carrying firearms; that at 1827 I observed the Marshals pulling out copies of books which were the personal property of the pastor of the church; that the Marshals also opened three crates of religious books marked for shipment to England; that later three policemen came into the basement of the church, one wearing gold braid, but made no explanation of their presence; that, to the best of my knowledge and belief, none of the meters seized had been used for the diagnosis or treatment of any disease and were not intended for such purposes, but were used in religious counseling and its instruction."

Others of the 16 affidavits that are a part of the Motion to Quash are to the same effect (J.A. 18-34), telling of the intrusion into living quarters and the search thereof, the intrusion into religious counseling sessions involving the confessional practices of the church, threats by the Marshals to break down the door of a room where a minister of the church was conducting religious counseling, and other like actions by the Marshals in the execution of the warrant.

Among the affidavits made a part of the Motion to Quash were those of some of the appellants herein whose meters were seized, and who stated under oath that the meters had been used as an aid in religious counseling and the confessional practices of the church and were not used to diagnose or treat any disease.

The "Device" Involved

The Hubbard E-Meter, which the government charged is a device subject to regulation and control under the Food, Drug and Cosmetic Act, is a small instrument having dials and controls and operated by flashlight batteries. A number of the instruments were introduced in the course of the government witnesses' testimony and are exhibits in the case (Govt. Exh. 1). The typical instrument has dimensions of about 9" x 6" with a depth of approximately 1¾". The instrument is generally "housed" in a wooden case, with a cover that is removable.

One of the government's expert witnesses, Dr. John Lacey, described the instrument as one "which will measure the electrical resistance, whether the electrical resistance be that of an inanimate body, like a carbon resistor, or the resistance between two points on the skin" (Tr. 193). The government's contention is that the Hubbard E-Meter is a device "within the meaning of 21 U.S.C. 321(h), and is misbranded in commerce."

Section 321(h) defines the term "device" as meaning "instruments, apparatus, and contrivances, including their components, parts, and accessories, intended (1) for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; or (2) to affect the structure or any function of the body of man or other animals."

FIRST AMENDMENT DEFENSE

The claimants of the seized religious literature of the church and the other seized property (who are the appellants in this case) based their Motion to Quash also on the assertion of their rights under the First Amendment to the

Constitution of the United States providing: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press. . . ."

The Appellant Church

The Founding Church of Scientology of Washington, D.C., appellant herein, was incorporated on July 21, 1955, (J.A. 277) as a nonprofit religious society and corporation pursuant to the provisions of Chapter 6 of Title 29 of the District of Columbia Code (1951), as amended, and more particularly, Sections 601 to 606, both inclusive, of said Chapter, under the name "The Founding Church of Man's Religion, Washington, D.C." (changed later by amendment to the present name).

Among the purposes of the church, stated in the Articles of Incorporation, were (J.A. 277):

"To act as a parent church of the propagation of the religious faith known as 'Scientology,' and to act as a church for the religious worship of that faith.

"In furtherance of such objects and purposes, the Society and Corporation shall conduct religious services for men, women and children of its congregations, and engage in other activities of a religious and educational nature for the propagation of its faith. The purpose of such activity shall be to foster the spiritual welfare of its members, recognizing the vital and divinely appointed inter-relationship of mind, body and spirit of mankind.

"In pursuance of its objective. . . the Church shall propagate and disseminate this creed: That God works within man his wonders to perform; that man is his own soul, basically free and immortal, but deluded by the flesh; that man has a God-given right to his own life; that man has a God-given right to his own reason; that man has a God-given right to free and open communication; that the human spirit is the only truly effective therapeutic agent available

to man; that a civilization can endure only so long as both spiritual and material needs find place within its structure. . . .

"The further objective. . . is to practice its teachings and beliefs and to propagate, in accordance with its tenets, healing of the sick and suffering by prayer or other spiritual means without the use of drugs or material remedy."

The Creed of the Church (Tr. 702-703, J.A. 283) states among other principles:

"That the study of the mind and the healing of mentally caused ills should not be alienated from religion or condoned in non-religious fields. . . And we of the Church believe: That man is basically good; that he is seeking to survive; that his survival depends upon himself and upon his fellows and his attainment of brotherhood with the universe.

"And we of the Church believe that the spirit can be saved and that the spirit alone may save or heal the body."

The Healing Arts Act, Title 2, Section 134 of the Code of Laws for the District of Columbia, governing the licensing of physicians, contains this exemption from licensing under that Act:

"The provisions of this Chapter shall not be construed to apply. . . (d) to persons treating human ailments by prayer or spiritual means, as an exercise or enjoyment of religious freedom."

The individual appellants whose meters and/or religious literature were seized in the raid described were connected with the church in one capacity or another, as evidenced by the affidavits attached to and forming part of the Motion to Quash, either as ministers, members of the administrative staff, instructors in Scientology, students of the church's religious school, the Academy of Scientology, or otherwise in attendance at the church or its affiliated organizations.

Action on Pleadings

On July 3, 1963, the District Court (by Judge Youngdahl) denied the claimants' Motion to Quash and stated, in the order:

"It appearing that the search and seizure attacked by the claimants was unobjectionable under the Rules of Practice in Admiralty and Maritime cases, and under other legal and Constitutional principles, and it appearing further that claimants' contention that said search and seizure and this libel violate the First Amendment's guarantee of religious liberty is more properly asserted as a matter of defense at the trial . . . Claimants' motion. . . is hereby denied." (J.A. 48).

Thereafter, the appellants herein filed their Answers as claimants in the District Court (J.A. 49), denying the government's allegation that the meters are devices within the meaning of the Food and Drug Act; that any of the literature specified in the libel constituted labeling for the meters, and that it was used for promoting sales of the articles or sales of services with the articles. Other substantive parts of the libel were also denied by the appellants.

As further grounds of defense the appellants as claimants in the District Court asserted that: (1) The Court lacked jurisdiction over the subject matter of the action in that all of the property is used in the proper and lawful exercise of a religion practiced or studied by claimants and taught by the Founding Church of Scientology of Washington, D.C., and its affiliated churches and organizations. (2) That the process issued was insufficient because lacking a proper and valid warrant authorizing the seizure, and the warrant issued failed to authorize the search of church religious premises and the seizure of church and other claimants' religious property. (3) That private property was seized from the claimants without delivery to them of a valid warrant or other valid process. (4) That the searches of the claimants' premises and the seizures of their property were in violation

of the Fourth Amendment to the Constitution of the United States, in that they were not conducted pursuant to warrant issued upon a showing of probable cause supported by oath or affirmation, and the premises searched and the property seized were not particularly described in the libel or warrant, including places of residence. (5) The searches and seizures were in violation of the First Amendment to the Constitution in that they were made upon premises used by the Church for religious worship and religious and spiritual instruction and thereby obstructed and interfered with the conduct and free exercise of a religion; they involved the confiscation by the Federal Government of material used solely in the instruction and practice of a religion; and they involved the confiscation by the Federal Government of books, pamphlets and other printed and published matter and thereby abridged and denied to the claimants the rights of free speech and of the press.

The appellant claimants further averred that the meters seized were intended for use and were used for confessional purposes as part of the religious practices of the Founding Church and its affiliated organizations, including schools for instruction in the principles and practice of the religion known as Scientology, which seeks to develop and improve the spiritual welfare of mankind and that by reason of such use are not properly subject to the jurisdiction of this Court under the provisions of the Federal Food, Drug and Cosmetic Act.

The prayer of the claimants was for the dismissal of the libel of information, discharge of the warrant, and the return to them of the property, together with award of damages for the unlawful seizure and detention of the property.

Rulings on Two Motions to Quash and Answer

The government moved to strike portions of the answers, and the District Court (by Judge Tamm) ruled as follows (J.A. 56):

"... It appearing to the Court that the previous ruling by Judge Youngdahl denying claimants' motion to quash the attachment herein finally disposed of the several issues raised by the challenged answers adversely to the claimants and the Court being of the view that the Trial Judge is bound to recognize such ruling, but it further appearing to the Court that the claimants are entitled to maintain throughout the record the validity of the challenged defenses and to preserve for appellate purposes the issues raised by such defenses, it is by the Court. . . ORDERED, that the libellant's motion to strike certain answers of the claimants is hereby denied, the denial being for the sole purpose of permitting the claimants to contend in any appellate proceedings for the validity of the defenses raised by the answers libellant sought to strike in its motion."

Thereafter, the claimants filed a motion to quash the writ of attachment of the books, pamphlets, and other written and printed matter that had been seized under the libel and to return such property to them (J.A. 57). The basis of the motion was the contention that the written and printed matter, consisting of the religious pamphlets, books and other literature of the church were neither labeling nor device within the terms and meaning of the Act alleged by the Government as the legal basis for the issuance of the warrant and attachment and seizure; and that the written and printed matter was not subject to attachment or seizure under any law of the United States of America. This motion also was denied by Judge Tamm, then a member of the District Court, without statement of the reasons for such denial.

After an extended period of discovery and pretrial proceedings, the case came to trial on April 3, 1967, before Judge Sirica and a jury, the claimants having requested a jury trial.

The trial occupied 13 court days and resulted in a verdict "For the Government" (J.A. 227).

During the trial, the court denied: (1) the claimants' motion to suppress evidence illegally seized (Tr. 542-543) (Tr. 1214-1217) and (2) the claimants' motion for a directed verdict (Tr. 1107-1126 and Tr. 1375).

Subsequent to the trial the court denied the claimants' motion for a judgment notwithstanding the verdict, or in the alternative for a new trial.

On June 28, 1967, the trial judge signed a decree of condemnation of the devices that had been seized and ordering their destruction and the destruction of the publications also seized as alleged "labeling" of the meters. The decree provided for a stay pending final disposition of any appeal (J.A. 228-270).

It is from this judgment and decree that the claimants have appealed and appear as appellants in this court.

The decree of condemnation lists for destruction by the United States Marshal approximately 150 different books, pamphlets and other publications seized from the church and the other appellants, including not only religious literature of the church but also supplementary written or printed matter which, according to claimants' contentions (Tr. 375, 377, 390-391) was used as historic material tracing the development of Scientology or its historic background.

The decree does not specify whether the church's literature shall be destroyed by burning or in some other manner.

STATUTES INVOLVED

Food, Drug and Cosmetic Act, 21 U.S.C. 301, *et seq.*

Healing Arts Act, Title 2, Sec. 134 of the Code of Laws for the District of Columbia.

STATEMENT OF POINTS

The verdict, judgment, and decree are unlawful and invalid in that:

1. The libel and warrant of seizure were fatally defective, and the search and seizure under them were invalid, under

the Fourth Amendment to the Constitution, because not supported by oath or affirmation and not based upon probable cause.

2. The search and seizure involved the premises, religious literature, and other property of a Church, its ministerial staff, religious students, and communicants, and were in violation of the first, fourth and fifth amendments to the Constitution.

3. The issuance of the warrant involved concealment from the Court that a Church was to be raided and its literature seized.

4. The execution of the warrant by U.S. Marshals involved search and seizure of some residential premises and unnecessary violence, and prevented the free exercise of religion.

5. The Court erred in permitting use of illegally seized evidence.

6. The government placed an "undercover agent" or spy in the Church, prior to the seizure, to obtain evidence; and the trial Court refused access to his reports, all in violation of the 1st, 4th, and 5th Amendments.

7. The government's evidence did not support a finding that the seized instruments constituted a device subject to the Food & Drug Act.

8. The government's seizure of Church literature was not only unconstitutional but the literature did not constitute "labeling" of the seized meters that established them to be devices subject to the Act.

9. There was not sufficient competent and relevant government evidence to submit the case to the jury, and the jury's verdict was not supported by the evidence.

10. The claimant appellants' evidence proved that the seized meters were not used in violation of law but were used as confessional aids in the practice of appellants' religion.

11. The trial Court erred in (1) admitting irrelevant, incompetent, and prejudicial evidence; (2) in instructing the jury to return a verdict "for" the government or "for" the claimants, without answering interrogatories needed for a just verdict, and despite the fact that 10 of the 12 jurors were government employees; (3) the trial Court permitted the government to query a witness on her religious beliefs and the practices of the Church in a manner that could prejudice the jury against the claimants.

12. The decree provides for destruction of the appellant Church's religious literature although there is no statutory authority therefor, in violation of the Constitution.

13. The verdict left in doubt which of different charged violations were found proved.

SUMMARY OF ARGUMENT

The search, seizure, and condemnation of property in this case were unlawful and in violation of the first, fourth, and fifth amendments to the Constitution because based on an unverified libel of information and warrant filed by the U. S. Attorney not based upon probable cause. The Judge who issued the warrant was not informed by the libel that the premises and property were those of a Church and used for religious purposes. The warrant was executed with great force, and the search and seizure included residential premises of the Church's staff. The property seized included a great quantity of the Church's religious literature and a hundred or more small electronic instruments *used in the confessional practices of the Church known as processing or auditing to determine the spiritual and emotional areas of difficulty in the lives of those who sought religious counseling on their problems of life.*

There is no proof of the actual use of the meters in the diagnosis or cure of disease, but the Creed of the Church includes the belief "That the spirit can be saved and that the spirit alone may save or heal the body." Under the Healing Arts Act of the District of Columbia there is an

exemption from the licensing of medical practitioners, permitting persons to be treated for human ailments by prayer or spiritual means, "as an exercise or enjoyment of religious freedom."

Some of the seized and condemned literature refers to benefits in health resulting from improvement of the *spiritual* condition of people who participated in the confessional practice mentioned as well as in other methods of "processing" and "auditing" the spirit of human beings.

The government adduced no proof that anyone was misled or defrauded by the use of the meter, although the libel alleged that the "labeling" in the form of Church literature was false and misleading. There was no proof that the meters were accompanied in interstate commerce by the alleged "labeling."

The appellants contend that it was the religious processing and spiritual "auditing," a part of which sometimes included use of the meter to determine the areas of spiritual difficulty, that aided the confessional practices of the Church of Scientology.

The appellants therefore contend that the search, seizure, trial, and condemnation, based on defective process, and confiscating Church property and religious literature, were violative of their rights of freedom of religion, press, speech, protection against unlawful government intrusion, and their right to due process of law.

Appellants further contend that practically all the evidence adduced by the government was incompetent, irrelevant, the result of unlawful searches and seizures, or offered to the jury in a manner prejudicial to the claimants and tending to result in religious bias against them.

They further contend that there was not sufficient competent and relevant evidence, lawfully obtained, to take the government's case to the jury, and that the verdict of the jury was not supported by properly presented evidence.

The trial Judge's instructions to the jury permitted its

consideration of so-called "labeling" for the meter which was published years before the meter was in existence or use.

The form of verdict prescribed by the trial Judge for use in reporting its decision was prejudicial to the claimant appellants, the jury consisting of ten government employees. The verdict left in doubt the jury's real determination of the several issues.

The seized literature was that of a religion and Church and not subject to government seizure or interference.

The seized literature which the Court's decree condemned and ordered destroyed, even if regarded as labeling for the meters used in religious counseling, was not subject to condemnation under the law.

ARGUMENT

I

THE SEARCH AND SEIZURE WERE UNLAWFUL AND IN VIOLATION OF THE CLAIMANTS' RIGHTS UNDER THE FIRST, FOURTH AND FIFTH AMENDMENTS TO THE CONSTITUTION, AND THE PROCEEDING THEREFORE WAS VOID *AB INITIO*.

A. The Process was Invalid.

Neither the libel of information nor the warrant issued for the search of appellants' premises and seizure of their property was supported by oath or affirmation, and the trial court's records are barren of any showing of probable cause to the Judge who issued the warrant.

There was no mention either in the libel or in the warrant of the Founding Church of Scientology whose premises and those of its school and other affiliated organizations were to be searched. This is a matter of significance, because the record shows that not only had agents of the Food and Drug Administration made prior investigation of the church and its affiliated organizations, visiting the

church in connection with their inspection of its operation (Tr. 88, 92, 159, 165). The record also shows (Tr. 1152-79 *et seq.*) that sometime before an "official inspection" was made, the Food and Drug Administration had infiltrated the church by causing one of its investigators to enroll as a student in the church's Academy of Scientology without disclosing his identity as such agent or informer for the Food and Drug Administration and, in fact, representing himself to be an employee of the Defense Department. (J.A. 284) In other words, the Food and Drug Administration, which instigated the search and seizure, had full knowledge that a church was to be raided and its literature seized, but failed to have the church named in the libel of information and warrant.

This raises the question whether the omission was deliberate, and with intent to avoid divulgement to the District Court that a church was to be raided.

Neither did the libel nor the warrant issued thereunder disclose to the court that the premises to be searched were in part occupied as residences for personnel of the church.

Is it not reasonable to assume that if the Judge to whom the libel of information was presented had been informed of these facts he would have made inquiry as to "probable cause" for issuance of the search and seize warrant? In this connection, attention is called to the fact that the Food and Drug Act authorizes criminal prosecution for misbranding and other fraudulent acts (U.S.C. 21, Sec. 333) with penalties for violations up to three years' imprisonment and fines up to \$10,000.00.

Furthermore, by the mere filing of the libel of information and the issuance of the warrant, a stigma was placed on the church and its religious school by the charge that the "labeling" of the meters used by the church and its affiliated organizations was false and misleading.

The search and seizure were, in effect, a quasi-criminal proceeding that could have resulted in a prosecution by the

use of evidence gathered in a raid based on a defective and invalid warrant.

The basic fact is that the United States Marshals entered the church premises and seized the articles and literature on a warrant that was based upon an unverified complaint. The government thereupon condemned the property under Section 334 of the Food and Drug Act. The issue, therefore, is whether the United States can condemn property that has been seized on the basis of an unverified complaint when the Fourth Amendment states that "no warrant shall issue but upon probable cause, supported by oath or affirmation."

There can no longer be any question, in the light of the Supreme Court's decision in "*One Plymouth Sedan*" v. *Pennsylvania*, 380 U.S. 693 (1965), that the Fourth Amendment applies to forfeiture cases such as the one at bar.

In that case the State of Pennsylvania had filed a petition for the forfeiture of an automobile which had been seized, along with 31 cases of contraband liquor. The seizure was made by the State agents without a warrant. The automobile's owner sought dismissal of the petition on the ground that the forfeiture of the automobile depended upon the admission of evidence which had been illegally obtained in violation of the Fourth Amendment as applied to the states by the Fourteenth Amendment. The trial judge agreed, but the Supreme Court of Pennsylvania reversed the lower court's decision. The Pennsylvania Supreme Court held that the constitutional exclusionary rule applied only to criminal proceedings and it was not applicable to a forfeiture proceeding which is civil in nature. The Supreme Court of the United States granted *certiorari* because of the importance of the question presented and the conflict in both state and federal decisions.

The Supreme Court held that a forfeiture proceeding is quasi-criminal in character and that the property, if seized in violation of the Fourth Amendment, could not be subject to forfeiture. The Court stated *inter alia*, at page 701:

"... It would be anomalous indeed, under these circumstances, to hold that in the criminal proceeding the illegally seized evidence is excludable, while in the forfeiture proceeding, requiring the determination that the criminal law has been violated, the same evidence would be admissible."

Mr. Justice Goldberg, speaking for eight members of the Court¹ declared that the "authoritative statement and * * * holding by the court in *Boyd v. United States*, 116 U.S. 616, would seem to be dispositive of the instant case." *Id.* at 698. As the Court noted, *Boyd* was a proceeding by the United States to forfeit 35 cases of plate glass which had allegedly been imported without payment of the customs duty. The District Judge entered an order compelling the owners of the plate glass to produce certain records which would aid the government in proving its case for forfeiture. The question before the court was whether the compulsory production of a man's private papers for their evidentiary use against him in a forfeiture proceeding constituted an unreasonable search and seizure within the meaning of the Fourth Amendment. The Supreme Court in *Boyd* held that the Fourth Amendment applied and barred such attempted seizure, stating (116 U.S. at 633-634):

"We are also clearly of the opinion that proceedings instituted for the purpose of declaring the forfeiture of a man's property by reason of offenses committed by him, though they may be civil in form, are in their nature criminal. In this very case, the ground of forfeiture as declared in the twelfth section of the Act of 1874, on which the information is based, consists of certain acts of fraud committed against the public revenue in relation to imported merchandise, which are made criminal by the

¹Mr. Justice Black concurred in the Court's disposition of the case but stated that he would have based the whole thing upon the Fifth Amendment's protection against self-incrimination as well as upon the Fourth Amendment's protection against unreasonable search and seizure.

statute; and it is declared that the offender shall be fined not exceeding \$5,000.00 nor less than \$50.00, or be imprisoned not exceeding two years, or both, and in addition to such fine, such merchandise shall be forfeited. * * * If the government prosecutor elects to waive an indictment and to file a civil information against the claimants—that is, civil in form, can he by this device take from the proceeding its criminal aspect and deprive the claimants of their immunities as citizens and extort from them a production of their private papers or, as an alternative, a confession of guilt? This cannot be. The information, though technically a civil proceeding, is in substance and effect a criminal one. * * * As, therefore, suits for penalties and forfeitures incurred by the commission of offenses against the law are of this quasi-criminal nature, we think they are within the reason of criminal proceedings for all the purposes of the Fourth Amendment of the Constitution. * * *

The above language was quoted with approval by the Court in *One Plymouth Sedan* (*Id.* at 697, 698).

As a further justification for its holding, the Court stated that “a forfeiture proceeding is quasi-criminal in character. Its object, like a criminal proceeding, is to penalize for the commission of an offense against the law.” (*Id.* at 700.)

It was further held in *Boyd* that a *validly executed warrant* does not necessarily make legal the ensuing search and seizure. The Court stated: (p. 630)

“It is not the breaking of his doors and the rummaging of his drawers, that constitutes the essence of the offense; but it is the invasion of his indefeasible right of personal security, personal liberty, and private property where that right has never been forfeited by his conviction of some public offense—it is the invasion of this sacred right which underlies and constitutes the essence of Lord Camden’s judgment (*Entick v. Carrington*, 19 How. St. Tr. 1029) * * * breaking into a house and opening boxes and

drawers are circumstances of aggravation; but any forcible and compulsory extortion of a man's own testimony or of his private papers to be used as evidence to convict him of crime or to forfeit his goods, is within the condemnation of that judgment. In this regard, the Fourth and Fifth Amendments run almost into each other." (*Id.* at 630)

There are other decisions of the United States Supreme Court upholding the rule that a "search" that respects all the procedural proprieties of the Fourth Amendment is nonetheless unconstitutional if it is a "search" for testimonial evidence. Among these decisions are *Gouled v. United States*, 255 U.S. 298, at 309; *United States v. Lefkowitz*, 285 U.S. 252, 465; *Harris v. United States*, 331 U.S. 145, 154; *United States v. Rabinowitz*, 339 U.S. 56, 64.

See also; to the same effect: *Berkowitz v. United States*, 340 F.2d 168 (1st Cir., 1965); *U. S. v. \$5,608.30 in United States Coin and Currency*, 326 F.2d 359 (7th Cir. 1964); *Camera v. Municipal Court*, 87 Sup. Ct. 1727 (1967); *Johnson v. United States*, 333 U.S. 10, 14; *See v. City of Seattle*, 87 Sup. Ct. 1737 (1967).

Even if this Court were to find sufficient evidence in the record to support the jury's verdict . . . contrary to appellants' contention later herein . . . the judgment and decree in this case must still be set aside because the government's actions were violative of the protective features of the Fourth Amendment in three separate and distinct ways: *First*, the search and seizure of claimants' property was carried out pursuant to a warrant which the District Court issued on the basis of information acquired in part during an unlawful governmental search; *second*, the warrant issued by the District Court authorizing the aforesaid search and seizure was not based upon a showing of probable cause supported by oath or affirmation; and, *third*, the manner in which the deputy U. S. marshals executed the warrant was Constitutionally "unreasonable."

Use of a Government Spy

On the first point, we call the Court's attention again to the fact that a Food & Drug employee was sent by the government agency to spy on the Founding Church of Scientology prior to the institution of this proceeding (Tr. 1152; cl's. Exs. 12, 12(a), 15, 16, 17). (J.A. 284-287) The record shows that he purchased a number of books and pamphlets pertaining to Scientology following instructions from official superiors of the Food and Drug Administration and was reimbursed by the government therefor (Tr. 1160-1197, at 1164-1165, 1173, 1174). He joined in activities of a church organization and made daily reports to his superiors at F.D.A. (Tr. 1174, 1190). The notes which he made during the course of his investigation were turned over to the U.S. Attorney's office in the District of Columbia (Tr. 1191). The books and pamphlets which he purchased at the church were forwarded to the Baltimore District Office of F.D.A. (Tr. 1190).

After establishing that the Food and Drug Administration had placed an investigative agent in the Founding Church of Scientology prior to January 4, 1963, and that he had written a number of reports concerning the church, claimants requested that the Court order the government to produce these reports so that it (the Court) could determine whether the information acquired by the agent while a "student" at the church's Academy of Scientology was the basis, in whole or in part, for the government's bringing the seizure action (Tr. 1192). The trial court denied this request (Tr. 1193). Appellants submit that they were thus prohibited by the Court from tracing the "fruit of the poisonous tree" which had its roots in the placing by the government of a spy within the church organization.

Unlawful Action of Marshals

The testimony proffered by the claimants in support of their motion to suppress (which was denied by the Court) (J.A. 59), and in the affidavits attached to and made a part

of the original motion to quash the libel and warrant (J.A. 18-34) furnish adequate evidence that the United States Marshals far exceeded their authority under the warrant both in violation of the rights of the church as a religious organization and of the individual rights of the other appellants herein.

Violation of Religious Rights.

In the case of *United States v. Ballard*, 322 U.S. 78, the Supreme Court, by its opinion through Mr. Justice Douglas, interpreted that provision of the First Amendment to the Constitution providing that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . ."

The case involved the prosecution in a U. S. District Court of persons charged with using the mails to defraud by means of literature distributed, funds solicited, and membership in the "I Am" Movement "by means of false and fraudulent representations, pretenses and promises," relating to the respondent's alleged religious doctrines or beliefs. Among the teachings of the "I Am" Movement conducted by the defendants were claims that the defendants had, by reason of supernatural attainments, the power to heal persons of ailments and diseases and to make well persons afflicted with any diseases, injuries, or ailments. The indictment alleged, in part, that the defendants well knew that the representations were false and untrue and were made with the intent to defraud persons to whom communicated or who were solicited. From the Court's decision, the following is quoted (*id.* at 86-87):

"Freedom of thought, which includes freedom of religious belief, is basic in a society of free men. *West Virginia State Board of Education v. Barnett*, 319 U.S. 624, 87 L. Ed. 1628, 63 Sup. Ct. 1178, 147 A.L.R. 674. It embraces the right to maintain theories of life and of death and of the hereafter which are rank heresies to followers of the orthodox faiths. Heresy trials are foreign to our constitution.

Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs. Religious experiences which are as real to life to some may be incomprehensible to others. Yet the fact that they may be beyond the ken of mortals does not mean that they can be made suspect before the law.

"Many take their gospel from the New Testament. But it would hardly be supposed that they could be tried before a jury charged with the duty of determining whether those teachings contained false representations. The miracles of the New Testament, the divinity of Christ, life after death, the power of prayer are deep in the religious convictions of many. If one could be sent to jail because a jury in a hostile environment found those teachings false, little indeed would be left of religious freedom. * * *

"But if those doctrines are subject to trial before a jury charged with finding their truth or falsity, then the same can be done with the religious beliefs of any sect. When the triers of fact undertake that task they enter a forbidden domain. The First Amendment does not select any one group or any one type of religion for preferred treatment. It puts them all in that position. *Murdock v. Pennsylvania*, 319 U.S. 105, 87 L. Ed. 1292, 63 Sup. Ct. 870, 891."

In this case, by an unverified complaint of the United States Attorney for the District of Columbia and two of his principal assistants, Church organizations and persons affiliated with them—and indirectly a lawfully established church, the appellant Founding Church of Scientology of Washington, D.C.—were publicly accused of fraudulent practices and their property forcefully seized from them. In effect, at least, they were also accused of practicing medicine without a license, in violation of the laws applying to the District of Columbia (D.C. Code, Title 2, Sec. 134).

The United States Attorney accomplished this without calling witnesses before a grand jury, or without even swearing to a complaint before a magistrate.

There is not an iota of evidence or proof in the voluminous record of the case that any person was actually defrauded, or that any person was actually misled, injured, or damaged either by the circulation of the seized literature or by use of the meters involved in the seizure.

There was not a particle of evidence or proof that any individual actually had been told that the meters would diagnose or alleviate or cure any disease which he had. On the contrary, there is in the record of the case the form of documents used by the church and its affiliated organizations specifically notifying in printed words those who came to the church or its organizations that the church and its organizations did not diagnose, treat, or cure diseases (Tr. 1295-6; CI's Ex. No. 26-27).

Indications of a Persecution.

The appellants submit that the *whole procedure* of the government from its inception in the placing of a spy in the church, through its framing of the libel of information and warrant in such a way as to withhold from the issuing Judge the fact that a church was to be raided and its religious literature to be seized, and including the violence of the Marshals in executing the warrant strongly suggests a religious persecution, rather than a proceeding at law in good faith.

There is no evidence in the record that the Food and Drug Administration or the United States Attorney's office ever notified the church or the other appellants that their activities or property were suspect, or called upon them to make any correction in their methods or in the church's literature which the government contends was "labeling" for the meters that were seized. When the investigative agents of the Food and Drug Administration interviewed the members of the church staff in charge of its operations

and gathered "evidence" in the form of church literature, they failed to divulge that the church might be prosecuted and its property seized, and that they were investigating an alleged penal violation of the laws of the United States (Tr. 102-3, 154-158).

But the Food and Drug higher officials did give advance notice to newspapermen that there was to be a "raid" on the church, and information as to the charges to be alleged in the libel, so that the reporters could prepare their stories in advance of the raid, or partially do so, and have newspaper photographers present at the time of the raid.

Something of the motivation of the government in seizing the appellant church's religious literature, and equipment used in its confessional procedures, is to be found, appellants believe, in the fact that the government *opposed* in the court hearing upon its proposed decree of condemnation the plea of appellants to be permitted to label the seized meters: "The Hubbard Electrometer is not intended for use in or effective for the diagnosis, cure, mitigation, treatment or prevention of any disease."

Under the law it was within the trial court's discretion to grant the government the "relief" which it seeks, i.e., a decree ordering the destruction of the seized Hubbard E-Meters. But it was also within the Court's discretion to order the seized articles released to their owners for the purpose of bringing them into compliance with the provisions of the Act. 21 U.S.C. 344(d). However, the record shows (J.A. 228-270) the government is intent upon destroying not only the meters but also the religious literature of the appellant church.

Appellants ask: Can there be found in this attitude of the government, and particularly of the Food and Drug Administration, anything but an intent to destroy the Founding Church of Scientology through destruction of its religious literature, and its confessional equipment?

Summed up, the search and seizure were in violation of Article I, Article IV and Article V of the amendments to Constitution of the United States.

They violated the appellants' rights to the free exercise of religion, abridged their freedom of speech and of the press, denied them security in their persons, houses, papers, and effects against unreasonable searches and seizures, and deprived them of liberty and property without due process of law.

The shocking violation by the government of these fundamental civil rights of all the appellants requires the reversal of the District Court judgment and decree and the termination of the case by a return of the seized property to the appellants.

II

THERE WAS NOT SUFFICIENT EVIDENCE TO GO TO THE JURY, AND THE VERDICT WAS NOT SUPPORTED BY THE EVIDENCE

At the close of the government's case during the trial, the claimants made a motion for a directed verdict (Tr. 1107). The Court denied this motion (Tr. 1126). Appellants also moved for a directed verdict in their favor after the conclusion of their defense and the government had rested. This motion also was denied (Tr. 1375).

After the verdict of the jury and the entry of the Court's decree of condemnation of the seized articles and literature, the appellants timely filed a motion for judgment notwithstanding the verdict, or in the alternative for a new trial. This motion was denied on August 28, 1967.

Appellants contend the denial of these motions was in error, for the reasons stated hereinafter.

A. The Evidence in the Record Does Not Support a Finding that the Hubbard E-Meter is a "Device" Within the Meaning of the Food, Drug and Cosmetic Act.

It is well settled that the courts will grant a motion for judgment notwithstanding the verdict when the evidence is such that, without weighing the credibility thereof, there can be but one reasonable conclusion as to the proper judgment in a case, and that is one contrary to the jury's verdict. See 5 Moore's Federal Practice Section 50.07(2) at page 2356 (2nd ed., 1966), and cases cited therein. Stated another way, unless there is evidence in the record to support the jury's verdict, that verdict and the judgment entered thereon cannot stand. *Jackson v. Wilson Trucking Corporation*, 243 F.2d 212, 217 (D.C. Cir., 1957); *Ralston-Purina Company v. Lack Industries, Inc.*, 199 F. Supp. 874, 875 (D. Minn. 1962).

Implicit in the jury's verdict in this case is a finding that the Hubbard E-Meter is a "device" within the meaning of the Food, Drug and Cosmetic Act. *United States v. Two Thousand Plastic Tubular Cases*, etc., 231 F. Supp. 236, 238 (M.D. Pa., 1964), aff'd 352 F.2d 354 (3rd Cir.); see Instructions to the jury (Tr. 1538). Thus, in the light of the court's definition of the word "device" (Tr. 1535-1536), the jury herein undoubtedly found that the seized article was an instrument, apparatus, or contrivance which was either (1) intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals, or (2) intended to affect the structure or function of the body of man or other animals.

1. It cannot be seriously contended that there is any evidence in the record to support a determination that the Hubbard E-Meter itself was intended to affect a structure or function of the body of man or other animals. Government counsel recognized the total lack of evidence on this point and, as a result, contended in his closing argument to the jury that the article was a "device" *solely* because it was

intended for use in the diagnosis, treatment, or cure of disease (Tr. 1504).

2. (a) The jury could not reasonably have inferred, from the testimony of the government's expert witnesses that the Hubbard E-Meter was intended for use in the diagnosis, treatment or prevention of disease.

The sum and substance of the testimony of the several scientists and physicians called by the government was that the Hubbard E-Meter is an instrument which will measure skin resistance; that there are other instruments which can perform this function better; but that the meter will register a response when a person attached to the instrument by wires and metallic tubes or "cans" has an emotional reaction (Tr. 240-242). Other testimony of the four medical experts was that the meter was not capable of diagnosing, treating or curing disease, or emotional or psychological problems of man (Tr. 980, 1081 and 1038, 1102). The government did introduce a letter from the files of the United States Customs Service, written by one Eleanore Turner allegedly on behalf of the church, regarding the classification, for *customs duty purposes*, of the Hubbard E-Meter and referring to it as a diagnostic instrument. The Customs Service representative, however, testified that as far as he knew it was correct that the United States had held the meter was not a diagnostic device for customs duty purposes. (Tr. 949, 954, 959, 1006). It is clear from the above that, not only does the testimony of the government's witnesses not support the jury's "device" finding, but it does not even bear upon the question of the "intended use" of the Hubbard E-Meter.

The record is entirely devoid of any testimony by government witnesses (despite intensive and extensive investigation by Food and Drug Agents over a period of several years) that any person was treated or any diagnosis made or offered to be made through use of the Hubbard E-Meter. The government's case, therefore, to establish the Hubbard E-Meter as a "device" is based entirely upon what it terms

"labeling" not actually on the meter or its containers or shipping cartons.

The so-called "labeling" consisted entirely of the religious literature of the appellant church, including its instructions to its ministers and staff members as to their counseling of persons who sought the aid of the church or who enrolled for instruction in Scientology.

The record, however, as it stood at the close of the government's case, was *NOT* devoid of competent testimony as to the actual purpose and use of the meters.

The government in pre-trial discovery proceedings had taken the deposition of Miss Marilyn Routsong, a minister and officer of the church. During three days (September 10, 11 and 15, 1964), Miss Routsong was questioned in great detail by the chief of the Civil Division of the office of the United States Attorney. At the very beginning of the deposition proceedings, the attorney for the appellants made this objection:

"Before we begin the deposition, I want to object to the taking thereof, on the ground that this whole proceeding is illegal. It is the result of an illegal search and seizure. It is a violation of the constitutional rights of the claimants, whose right of religious freedom is being violated; whose civil rights are being violated by this proceeding, and we reserve all objections on those grounds and on the grounds also that there has been a seizure of their property without due process of law."

The government attorney proceeded, nevertheless, with the taking of the deposition, which embodies 347 pages. In the trial of the case, in 1967, the government read a large part of Miss Routsong's deposition into the record for consideration by the judge and jury (Tr. 314 to 719). A reading of the entire deposition will disclose that every effort was made by counsel for the government to obtain from Miss Routsong an admission that the Hubbard E-Meter was used for the diagnosis or treatment of disease. How-

ever, she categorically denied that the meter was so used (Tr. 704). She stated, under questioning by government counsel, that the instrument is used by individuals who practice a religion known as Scientology, as an aid when "auditing" others (Tr. 508-509). Miss Routsong explained that the word "auditing" and "processing" are used synonymously (Tr. 590). Scientologists, she testified, consider the Hubbard E-Meter to be a "confessional aid" (Tr. 509, 704).

She further testified that when Scientologists talk about "auditing" others, they are referring to those instances when an auditor or counsellor sits down with a pre-clear (an individual seeking spiritual counseling) and questions him on various matters (Tr. 505). The belief of the ministers and auditors of the church of Scientology is that the meter points out to the auditor, by virtue of needle movement on the dial "areas where there is a spiritual emotional reaction" (Tr. 511).

Specifically, the belief of the ministers and auditors of the church is that the meters tell the auditor whether the pre-clear has had a spiritual reaction to the question asked (Tr. 503). Miss Routsong further testified under oath, that to the auditor or minister such a reaction means that "as the spirit there is something on the subject being discussed to which . . . (the pre-clear) is reacting" (Tr. 504). In other words, "the subject is not cleared" (Tr. 504).

Miss Routsong further testified that, in "auditing" the spirit itself is addressed and not some condition or illness of the body (Tr. 556). The purpose of undergoing auditing, she stated, is to become a "clear" (Tr. 491). Becoming a "clear" is the "spiritual goal" in Scientology (Tr. 491).

To achieve this spiritual state of being, one must be audited through a series of different processes, some of which require the use of the Hubbard E-Meter while others do not (Tr. 512). Miss Routsong stated that as a person goes through these various processes there is a continual and gradual "evaluation of the spirit" up through an improved state of being through a period of time until the

"labeling" not actually on the meter or its containers or shipping cartons.

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Specifically, the belief of the ministers and auditors of the church is that the meters tell the auditor whether the pre-clear has had a spiritual reaction to the question asked (Tr. 503). Miss Routsong further testified under oath, that to the auditor or minister such a reaction means that "as the spirit there is something on the subject being discussed to which . . . (the pre-clear) is reacting" (Tr. 504). In other words, "the subject is not cleared" (Tr. 504).

Miss Routsong further testified that, in "auditing" the spirit itself is addressed and not some condition or illness of the body (Tr. 556). The purpose of undergoing auditing, she stated, is to become a "clear" (Tr. 491). Becoming a "clear" is the "spiritual goal" in Scientology (Tr. 491).

To achieve this spiritual state of being, one must be audited through a series of different processes, some of which require the use of the Hubbard E-Meter while others do not (Tr. 512). Miss Routsong stated that as a person goes through these various processes there is a continual and gradual "evaluation of the spirit" up through an improved state of being through a period of time until the

state of "clear" is reached (Tr. 512). Through "the general improvement and well-being of the spirit," Scientologists believe "illnesses of the body drop out" (Tr. 601).

Miss Routsong stated time and time again, in answer to government counsel's questions regarding the curing and treating of diseases, that auditing or processing is addressed to improving the well-being of the spirit (Tr. 558, 580, 601).

The trial court permitted Miss Routsong's deposition to be read to the jury by an associate government attorney (a woman) including numerous questions that had been objected to by counsel for Miss Routsong and the other appellants, who were claimants for the seized meters and church literature, on the grounds of irrelevancy, violation of the right to religious freedom and the fact that Miss Routsong was being questioned in part on seized literature that had not yet been admitted to the record as exhibits but had merely been identified as part of the seizure. The court permitted the deposition to be read even though Miss Routsong was present in the witness room of the courthouse and could have been put on the stand personally as a government witness. The court permitted such procedure on the basis of Federal Rule 26(d)(2).

There was a standing objection (Tr. 322-329) by appellants' counsel to questions relating to Miss Routsong's religious beliefs, which not only were asked in violation of the First Amendment but were prejudicial in exposing to a jury's consideration religious beliefs that they may have considered absurd or unacceptable. Miss Routsong testified (Tr. 598, 666-669-673) that "the E-Meter is a tool; * * * this is what we call a confessional aid * * * in the confessional it is a very handy tool. I cannot truthfully say that in a lot of processes, that it could not be done except if you had an E-Meter there, but it would certainly be done a lot more easily and thoroughly and to the benefit of the spirit with the tool of an E-Meter to handle with the person on it."

Meter a Confessional Aid

She stated that it was an aid to the auditing process of Scientology (Tr. 509) “* * * there are many processes which one could run without an E-Meter. We in the earlier years did not even use an E-Meter for long periods of time. * * * The aid to the auditor is in the application and use of his skills and in taking a confessional * * * as I stated before it tells the auditor areas where there is a spiritual, emotional reaction, in order for it to be—for the auditor’s further handling it. (Tr. 511) * * * I want to clarify this a little bit. Clearing is a process or goal toward which people work in Scientology. It is a state of the spirit. It is not something that you would use just one process to accomplish. This is a thing of continually and gradually (processing) in elevation of the spirit, up through an improved state of being through a period of time until the state of clear is reached. * * * There are some processes in the line of doing this in which the E-Meter would not be totally essential.” (Tr. 512).

Miss Routsong further testified (Tr. 555) as follows:

“I want to put in here that as a part of this pertaining to the pre-clear, who comes to the Founding Church for processing, that he signs a release. I wish to read the part of it pertaining to this * * * he says: ‘And I understand fully methods used by such organizations’—this refers to the Hubbard Guidance Center or Founding Church of Scientology—‘And I understand fully and completely that the said purpose of said organizations and employed personnel is based upon the practice of Scientology which I know to be a spiritual and religious guide intended to make persons more aware of themselves as spiritual beings, and not treating or diagnosing human ailments of body or mind, and not engaged in the teaching of medical arts or sciences, and not granting scholastic degrees or furnishing accreditation toward college, university or scholastic degrees.’”

Appellants emphasize that nowhere in the government’s case is there any evidence—not the testimony of even one

witness—that the church or other appellants told any person orally or in writing that the use of the E-Meter would diagnose, alleviate, or cure any disease.

Expert Testimony on Meter.

As to the function served by the meter, there is interesting evidence from one of the government's own expert witnesses to the effect that the meter would serve the purpose claimed by Miss Routsong and in much of the church's literature that was seized.

That evidence is found in the testimony of Dr. John I. Lacey, called by the government as an expert witness. He testified (Tr. 170, *et seq.*) that he was psychophysicologist and neurophysicologist and is chairman of the Department of Psychophysiology and Neurophysiology at Fels Research Institute in Yellow Springs. He stated that he directs a research project studying the nervous system in relationship to normal and abnormal behavior (Tr. 171). He stated that he had examined the Hubbard E-Meter (Tr. 176 *et seq.*) and described its electrical properties. He stated that as an instrument for bio-medical investigation, it is a rather poor one (Tr. 184), and made technical criticisms of its construction. He demonstrated to the jury the operation of the meter as an instrument "reading the skin resistance" (Tr. 193). He testified that the instrument reflected skin resistance responses and "a large part, as I say, of skin resistance responses are attributable to activity of the sweat glands" (Tr. 196). He testified to the effect that change in the pressure with which the cans or metal tubes are held by the hands and the amount of sweat excreted on the surface of the skin would produce skin resistance changes reflected by instruments of the nature of the E-Meter (Tr. 194-197).

In addition, the doctor testified—perhaps to the discomfiture of the government—as follows:

"So anything that provokes sweating in response to thermal or heat requirements of the situation will produce skin resistance changes.

"Beyond that, any stimuli, a noise in the room, a flashing light, a sudden pain in the teeth, a sudden increase in muscular tension, if you shove your foot down on the floor, a random thought, mental effort, emotional reactions, the sound of a baby's crying for a mother, a wide variety of stimuli will produce a skin resistance change, just as it will produce a change in the activity of almost any autonomically innervated organ. * * * The number of circumstances in which a skin resistance response can be secured is so great that one refers to this kind of a response as a non-specific response of the body. That is to say, it does not seem to be serving in many respects any immediate vital need of the body for survival or for maintenance of levels of blood measure, levels of heat, levels of glucose, sugar, and so on." (Tr. 197-198)

On cross-examination, Dr. Lacey testified that measurements of changes in skin resistance are used in lie detectors. He further testified (Tr. 228):

"If a very large skin resistance response were given when a stimulus was administered or question was asked, one could judge that a variety of things might have happened. I emphasize 'a variety of things' and the word 'might' have happened. That skin resistance response could have occurred because the person was uncertain of the question being asked, was uncertain of response to give. This has been demonstrated to produce large skin resistance responses. The large skin resistance response may have occurred because the question was personally embarrassing for a variety of reasons so that the person was reluctant under those circumstances existing at that time to answer the question.

"The large response might have occurred because at the same time that the question was asked something in the immediate surroundings caught the person's eye. The response might have occurred because at or about the time the question was asked there was a loud noise outside the room. The large

response might have occurred because the person was impatient or irritated or angry by the tone of voice in which the question was asked. In other words, one can only assume, given a large skin resistance response, that one of the many varieties of occasions and stimuli which cause skin resistance responses had occurred at that time."

The following additional testimony by Dr. Lacey even further buttressed the appellants' use of the E-Meter to indicate emotional or spiritual reactions of persons involved in the confessional practices of the Founding Church. On page 232, *et seq.*, of the transcript of the trial, the doctor testified in response to a question asked on cross-examination by government counsel as to whether he believed "a device such as this and this device in particular, could be of any use in the diagnosis, therapy and cure of any mental or physical disorder," as follows:

"The reason I wanted to separate this device from what I would consider an effective skin resistance device is for an effective skin resistance device the answer to that question is to a small degree, yes. The good skin resistance devices have been used as a research tool and only very occasionally as a clinical tool to try to discover areas of emotional conflict within an individual who is characterized by a neurotic ailment, if that is the correct word to use here. Typically, one might administer a word association test or engage the patient in a conversation, and one would assume if upon repeated inquiry about a given potential conflict area in a patient, one got a large skin resistance response or a variety of other responses, that perhaps this area represented an area of conflict for the patient and therefore it was justifiable to engage in more prolonged inquiry into, for example, one's relationship with one's husband, or child, or mother. In a very small sense, instruments such as this, good instruments typically have been used in the study of psychotherapy, either of psychoanalysis or of other forms of psychotherapy in which an attempt has been

made to measure by this instrument the impact of emotional discussions on the patient as therapy goes on. * * * Its main use as a research clinical tool today is in the field of this preliminary kind of diagnosis I was talking about in diagnosing the area of conflict * * * .”

On further cross-examination by counsel for the claimants, Dr. Lacey who had characterized the E-Meter as a “poor” instrument, stated that he had helped to design a device that gauges skin response, which is in scientific use and commercially available. (Tr. 236)

Appellants consider Dr. Lacey’s testimony of prime importance because it serves to confirm, by the expert testimony of a government witness, that the Hubbard E-Meter was an instrument of the type that can be and has been used to determine emotional and spiritual reactions of people being questioned or engaged in conversation in the confessional process, or spiritual auditing procedure, of the appellant church to determine their emotional and spiritual state.

The testimony tends to confirm the appellants’ repeated statements under oath, of record herein, that the purpose of the meters was *not* to diagnose, alleviate, or cure diseases, but to determine the spiritual condition of the Church’s communicants.

To the same effect as Miss Routsong’s testimony about the actual use of the meter was the testimony of a witness for the claimants, Miss Eunice O. Ford. She is a minister and president of the Church of Scientology of New York. (Tr. 1295, *et seq.*) She quoted at length from the literature of Scientology (Tr. 1301 *et seq.*) that: “Scientology is not a therapy for the sick * * * A trained Scientologist is not a doctor; he is someone with special knowledge in the handling of life * * * We are not healing people, we are not dealing in the business of healing. We are in the spiritual confessional business and training people to be spiritual counsellors. So I am not familiar with healing. That is it in a

nutshell. * * * People come to us to become more able * * * in life, all areas of life. * * * The Hubbard Guidance Center, part of Scientology United States * * * is the place * * * where many, many people have said that they learned and learned again the truth of themselves and of their ability and potentiality." (Tr. 1313-14)

Appellants submit that to infer, from the fact that Scientologists believe that, by processing, the spirit can be improved, and, as a product thereof, man's illnesses may disappear . . . and from the fact that Scientologists use the Hubbard E-Meter to assist them when processing pre-clears . . . that the instrument is intended for use in diagnosing and treating disease is completely unjustified.

On the contrary, the only reasonable inference which properly can be drawn from the *testimony* and documentary *evidence* in this case is that the Hubbard E-Meter is not intended for use as a medical "device" but rather is used solely as a confessional aid in spiritual counseling, i.e., Scientology "processing."

B. Church Religious literature, offered by the government as "labeling" identifying the meter as a device subject to the Food and Drug Act, failed to furnish competent, relevant, valid, or sufficient evidence to go to the jury or to support its verdict.

Having utterly failed to adduce any evidence of living witnesses that the appellants had represented or used the meter to diagnose, alleviate, or cure human illnesses—although the Food and Drug Administration had planted a spy in the church organization who had observed church operations—the Government resorted, in an effort to sustain the burden of a preponderance of proof that rested upon it, to introduce as exhibits a large number of copies of the appellant church's religious literature. These had been either unlawfully seized or procured by a deceptive and invalid "inspection" (Tr. 92 *et seq.*) to which the church was not subject under any law.

Such literature was offered and introduced in evidence as "labeling" for the meter, to bring it within the authority and jurisdiction of the Food and Drug Administration. The Food and Drug Act, Title 21 U.S. Code Sec. 331, prohibits the adulteration or misbranding of any food, drug, device or cosmetic in interstate commerce. Under Section 321(k) "the term 'label' means a display of written, printed, or graphic matter upon the immediate container of any article" or appearing on the outside container or wrapper, if any there be, of the retail package of such article.

The term "labeling" means, under Sec. 321(m), "all labels and other written, printed, or graphic matter (1) upon any article or any of its containers or wrappers, or (2) accompanying such article." Under Sec. 321(n) "if an article is alleged to be misbranded because the labeling is misleading, then in determining whether the labeling is misleading there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, or any combination thereof, but also the extent to which the labeling fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling relates under the conditions of use prescribed in the labeling thereof or under such conditions of use as are customary or usual."

The meters bore *no label*, as defined in Sec. 321(k), indicating that they were to be used in the diagnosis or treatment of disease, as will be apparent upon examination of those introduced as exhibits. They simply were marked "For Use in Scientology."

The voluminous books, pamphlets, etc., introduced in evidence by the Government, and given en masse to the jury by the trial Judge (Tr. 1567), consisted of the religious literature and teachings of the Church, some of only historical use or value in tracing the development of what ultimately became the religion of Scientology (Tr. 390-418).

An integral part of the religious practices of Scientology and the appellant Church is a confessional procedure, known as auditing or processing, which is used, in effect, to reveal, identify, improve and free the *spirit* of those who come to the Church for counseling designed to uplift their lives (Tr. 663-4, 555-562).

It is this religious literature which the Government—unable to offer any proof that the meter itself was actually used to diagnose or cure disease—seeks to prove was “labeling” that made the meter a device subject to the Food and Drug Act. The government did this by either ignoring or riding rough shod over the fact that the references in the Church literature to acts of healing *were all to the religious practice of spiritual processing or auditing*, based upon the Church’s Creed: “And we of the Church believe that the Spirit can be saved and that the Spirit alone may save or heal the body.”

The ministers and communicants of Scientology have as much legal right to such a belief, and the practice of their religion as, for instance, the teachers and communicants of Christian Science churches, or those of other faiths who believe in spiritual healing.

But the government, with the consent of the Trial Judge, succeeded in placing before the jury 155 books, pamphlets, and other printed matter listed in Appendix A of the decree from which appeal has been taken (J.A. 230-270), to be considered as “labeling” that would prove the Hubbard E-Meter to be a device to diagnose, treat, or cure disease.

Careful examination of the excerpts from this literature, appearing in that appendix to the decree of condemnation, *reveals that not a single one states the meter will diagnose, treat, or cure diseases*. All the references in all the excerpts are to the religious practices of clearing, auditing, and processing of Scientology. These are *exempt* under the Constitution from interference by the government, as exercises of the right of religious freedom and freedom of the press and of speech.

A further examination of the excerpts that are part of the decree of condemnation reveals that 44 of the books, pamphlets, or other pieces of Church literature were written prior to August 1957, when the Hubbard E-Meter had not yet been made and was not in use (Tr. 1263). An additional 34 of the items listed in the decree made no direct or indirect reference to the Hubbard E-Meter. And in 24 of the remaining items, all of which are back issues of Scientology's *Ability* magazine, the only reference to the meter is in classified ads which state where it may be obtained (Govt. Exs. 9cw, 9cy, 9cz, etc.)

A cursory inspection—and even a close scrutiny—of the voluminous literature seized from the Church and the other appellants clearly demonstrates that it relates basically to the spiritual improvement of mankind and of individuals and to the benefits derived from the religious processing and auditing of the spirit.

Furthermore, it is apparent from an examination of the Church's literature, embodied in a great number of the exhibits in this case, that it was intended for the training and religious education of its Ministers, auditors, and staff who participated in the clearing, processing, and auditing practices of the religion of Scientology.

In *U. S. v. 24 Bottles "Sterling Vinegar & Honey,"* 338 F.2d 157 (2nd Cir. 1964), which involved the seizure of that product as well as two books, the court, in reversing a judgment for seizure based on "misleading labeling," said . . . (following *Kordel v. U. S.*, 335 U.S. 345 (1958)):

"The labeling subject to the Act is not limited to this common form of label, however; it includes not only the written matter 'upon any article or any of its containers or wrappers,' but also written matter 'accompanying such article.' 21 U.S.C. Section 321(m). *On the other hand, labeling does not include every writing which bears some relation to the product.* There is a line to be drawn, and, if the statutory purpose is to be served, it must be

drawn in terms of the function served by the writing. * * * *In our view, the Food & Drug Act was intended to deal with such claims only when made in immediate connection with the sale of the product.*" (Emphasis added)

As noted, and as will be evident from examination of the literature introduced by the government as "labeling" exhibits, many of them consisted of instructions for religious processing and auditing to achieve a spiritual state of "clear." Pertinent to this is the decision in *Nature Foods Center, Inc. v. U.S.*, 310 F.2d 67 (1962), where the First Circuit Court of Appeals refused to consider printed "lecture notes" as labeling. In this case the defendant was charged with inadequate labeling of certain dietary supplements. The Court in rejecting the "lecture notes" as labels noted, *inter alia*, that the notes were not available at all stores where the products were for sale, and they were obtained only upon payment of additional prices.

In the present case, there is no evidence that the literature of the Church, in evidence and as listed in the appendix to the decree, *accompanied* the meters when they were sold.

Summarized, the government failed to prove by any sound or credible evidence, and a preponderance thereof, that the religious literature of the Church which was seized, was "labeling" which made the Hubbard E-Meters a "device" subject to the Food and Drug Act and liable to seizure for misbranding.

The evidence of the literature itself is that it was used as a legitimate expression of the religious beliefs, purpose, and function of the appellant Church and its ministers, staff, and communicants. This was protected from government interference by the provisions of the First Amendment to the Constitution, guaranteeing the basic rights of the free exercise of religion, freedom of speech, and freedom of the press.

III

**THE VERDICT SHOULD BE SET ASIDE BECAUSE OF
ERRORS IN THE TRIAL PREJUDICIAL TO
THE APPELLANTS**

In addition to the errors of the trial Court in refusing to quash the libel of information and warrant of seizure, to suppress so-called evidence illegally seized, denial of access to government reports of information, etc., there were other serious errors by the trial Judge that were prejudicial to the claimants who are appellants here.

Among these, but not exclusive of other errors of the trial Court, are the following:

1. Admission of incompetent and irrelevant "labeling."

The trial Judge permitted the jury to have, for examination, *all* the government's exhibits of Church literature (Tr. 1567), including a book (Dianetics) and much other literature that preceded *by years* the establishment of the appellant Church and the use of the Hubbard E-Meter; and other books and pamphlets that made no mention at all of the Hubbard E-Meter. The trial Court compounded this serious error by instructing the jury (Tr. 1536) that when deciding whether or not the Hubbard E-Meter was a "device" *it* (the jury) could "consider all of the pieces of literature which. . . (it) deem(ed) relevant *without consideration of the date on which the particular pieces of literature were printed or published.*"

Appellants submit that *relevance* is a question of law for the Court, not of fact for the jury. The courts have consistently held that, in determining whether a particular article was intended for use in the diagnosis, cure, treatment or prevention of disease, the trier of facts could consider only those sources of information which were "relevant" to the issue before it. *U.S. v. 250 Jars. . . Honey*, 218 F.Supp. 208, 211, (E.D.Mich. 1963), *aff'd* 344 F.2d 288 (6th Cir. 1965); *U.S. v. Sudden Changes*, 36 F.R.D. 695, 699 (E.D.N.Y. 1965).

It is inconceivable how literature written *long before the seized article was invented* can possibly be said to be "relevant" to the question of the article's "intended use." Yet the Court in effect instructed the jury that it could consider such literature when deciding whether the Hubbard E-Meter was intended for use in the diagnosis or treatment of disease.

Clearly, the trial Court's instruction was erroneous and prejudicial to the claimant appellants. In its closing argument, government counsel encouraged the jury to look at some of the early literature, predating the invention or use of the Hubbard E-Meter, when determining whether it was a "device" or not (Tr. 1400-1402). Some referred to an instrument not used by appellants.

2. Admission of Government-marked evidence.

In addition, the trial Court erred in sending to the jury room seven government exhibits of seized literature, which contained markings made by government personnel during the course of preparation for trial (Tr. 1561, 1562). These markings were made by the insertion of paper clips in the literature, which appeared next to statements which the government believed favorable to its case. Some of the marked passages had been read to the jury during the trial; others had not (Tr. 1563).

The claimants' case was clearly prejudiced by the Court's action. Although these same exhibits contained passages which supported the position urged by the *claimants*, the latter were not, of course, given opportunity to mark such passages before the exhibits were sent to the jury room. The effect of the trial Judge's action may have led the jury to disregard the other contents of the marked literature, to the prejudice of claimants' right to a fair trial.

3. Error in form of Verdict.

The trial Court also erred in rejecting the claimants' request for an instruction to the Jury to return a general verdict with answers to specific interrogatories (Tr. 1520) (J.A. 220). That form of verdict would have required the

jury to find: "in favor of the _____ and answer the interrogatories submitted to us as follows: (1) Is the Hubbard Electrometer or Hubbard E-Meter a device within the meaning of the Food, Drug and Cosmetic Act? Answer 'yes' or 'no'. (2) Is any, some portion, or all of the literature admitted into evidence labeling for the Hubbard Electrometer or Hubbard E-Meter? Answer 'yes' or 'no'. (3) Does the labeling for the Hubbard Electrometer or Hubbard E-Meter contain false or misleading statements with respect to its intended use? Answer 'yes' or 'no'. (4) Does the labeling for the Hubbard Electrometer or Hubbard E-Meter contain adequate directions for its use? Answer 'yes' or 'no'."

Instead, the trial Court merely instructed the jury to return a verdict either "For the government" or "For the Claimants." This was prejudicial to the claimants for two cogent reasons:

(a) District Court records show that ten of the twelve jurors who tried the case were federal government employees. As a result, claimants, by the Court's *form* of the verdict the jurors were required to return, were denied a right guaranteed by the sixth and seventh Amendments to the Constitution—the right to a *fair* and *impartial* jury. No juror can be said to be completely unbiased or impartial who is called upon to cast his vote merely either in favor of his employer, the provider of his "bread and butter," or in favor of some unrelated party, in a civil case. Yet this was the choice which the Court gave ten of the twelve jurors in this case.

(b) The jury verdict, in the stark *form* required of it * * * "For the government" * * * must be regarded as a finding that the Hubbard E-Meter was a "device." But it leaves in question whether the labeling was misleading and fraudulent as charged by the government in one portion of the libel of information, or whether the meter simply failed to bear adequate directions for use, as alleged in another part of the libel. Thus, the jury's verdict is of no value to the Court or the parties in the case in determining the

appropriate remedy, which was, after all, presumably the reason the libel was filed.

So the question is raised by the verdict whether it is appropriate to destroy the meters and the Church's extensive religious literature if, as is at least possible under the form of the verdict, the jury did not find that the labeling was false and misleading but that the meters simply lacked adequate directions for use.

4. Prejudicial and unlawful examination of witness.

The claimants were handicapped and prejudiced in their defense of the right to recover their property by the action of the trial Court in permitting government counsel to read to the jury large portions of the deposition taken from a Minister of Scientology, Miss Marilyn Routsong, over the numerous and repeated objections of claimants' counsel.

Her testimony, in deposition form, occupies a large part of three volumes of the stenographic transcript of the trial, from pages 314 to 719, and cannot be adequately summarized in this brief. Therefore, appellants have devoted a part of the joint appendix to what might be termed a mere "sampling" of the highly prejudicial questions asked of Miss Routsong and read, with her answers, to the jury.

Numerous questions had no relevancy whatever to the basic issue of whether the meters were used for the diagnosis or treatment of disease. They involved, instead, *Miss Routsong's personal religious beliefs*, her faith in the miraculous results of her religion; the financial operations of her Church; the methods of interesting more people in the religion; the names of persons who had participated in the religious confessionals, and the divulgement of information given in the course of religious counseling. The jury was allowed to hear Miss Routsong's refusal to give such privileged information. They were exposed—prejudicially to the claimants—to religious beliefs much different than those professed or expounded by other Churches . . . and to the recital by Miss Routsong of what may have been instances of miraculous healing not among those related in Christian Bibles.

This kind of questioning—irrelevant and objectionable in law—was atrociously violative of the rights of the witness and the other claimants to the exercise of their religion without government interference. It destroyed any semblance of a fair trial, and served to deprive the claimants “of life, liberty, or property, without due process of law,” in violation of the fifth Amendment to the Constitution.

IV

THE DECREE IS UNLAWFUL AND UNCONSTITUTIONAL IN ORDERING THE DESTRUCTION OF THE CHURCH'S RELIGIOUS LITERATURE

Nowhere in the Food and Drug Act, or any other law of the United States, is there authorization for the destruction of the religious books or other literature of a Church, as decreed by the trial Court.

If, however, the seized literature be regarded as mere “labels” or “labeling” under the Act, it is still true that the law (21 U.S.C., Sec. 334(d)) does not authorize the destruction of such matter but specifies *only* “Any food, drug, device, or cosmetic” as being subject to destruction or sale after condemnation. Indeed, the government did not pray in its libel for the condemnation of the literature but only for the condemnation of the meter: “the aforesaid article.” And the fact is that the government has cited *no statutory authority* for the destruction of the Church literature.

The courts have extended the protection of the first, fourth, and fifth amendments of the Constitution to books and literature of many kinds, including even so-called obscene literature. (See *Marcus v. Search Warrant of Property*, 367 U.S. 717 (1961), 6 L.Ed.(2d) 1127; and *A Quantity of Books v. Kansas*, 378 U.S. 205, 12 L.Ed.(2d) 809.

The decree here in question is clearly invalid and in violation of the Constitution in its attempt to condemn and destroy the religious and other literature of a Church and of the individual appellants.

CONCLUSION

It is evident from the record that there were serious errors by the trial Court in pre-trial and trial proceedings that were highly prejudicial to the claimant appellants.

But even more serious were the violations of their Constitutional rights . . . and, correspondingly to the Constitutional rights of many millions of other citizens of various faiths for whom the trial Court's disposition of this case might form a seriously damaging precedent. The appellants have been deprived of the precious rights of freedom of religion, of speech, and of the press, as well as of the right to security in their persons, houses, papers, and effects; and have been deprived of liberty and property without due process of law.

It is abundantly clear from the record that the government has not produced and cannot produce competent and relevant evidence of a violation of the Food & Drug Act.

Accordingly, the appellants pray this honorable Court to set aside the verdict, judgment, and decree of the District Court and to order the dismissal of the libel action, the release to appellants of their seized property, and the award to them of their costs incurred herein and in the District Court.

Respectfully submitted,

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BRIEF FOR APPEALS

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA

No. 1113

THE FOUNDING CHURCH OF SCIENTOLOGY
OF WASHINGTON, D. C., ET AL., APPELLANTS

vs.
UNITED STATES OF AMERICA, APPELLEE

Appeal from a Decree of the United States District
Court for the District of Columbia

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Department of Health, Education and
Welfare.

United States Court of Appeals
for the District of Columbia

JUL 13 1968

District Court No. 1-63

CLERK

QUESTIONS PRESENTED

In the opinion of the Appellee, the Questions are:

1. Whether a libel for condemnation action instituted pursuant to Section 304 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 334, is a civil action, as the Courts have consistently held.
2. Whether a device, misbranded within the meaning of the Federal Food, Drug, and Cosmetic Act, is excused from compliance solely because those who recommend and use the device in the purported treatment and cure of disease among the general public are members of a religious organization.
3. Whether there was sufficient evidence before the jury to sustain the verdict that the E-meter is a device which is misbranded in violation of the Federal Food, Drug, and Cosmetic Act.
4. Whether literature is "accompanying labeling" within the meaning of Section 201(m) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 321(m), even though written before a device is "created," when that literature is used to promote the sale, distribution, and use of that device.

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QUESTIONS PRESENTED

In the opinion of the Appellee, the Questions are:

1. Whether a libel for condemnation action instituted pursuant to Section 304 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 334, is a civil action, as the Courts have consistently held.
2. Whether a device, misbranded within the meaning of the Federal Food, Drug, and Cosmetic Act, is excused from compliance solely because those who recommend and use the device in the purported treatment and cure of disease among the general public are members of a religious organization.
3. Whether there was sufficient evidence before the jury to sustain the verdict that the E-meter is a device which is misbranded in violation of the Federal Food, Drug, and Cosmetic Act.
4. Whether literature is "accompanying labeling" within the meaning of Section 201(m) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 321(m), even though written before a device is "created," when that literature is used to promote the sale, distribution, and use of that device.

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21,483

**THE FOUNDING CHURCH OF SCIENTOLOGY
OF WASHINGTON, D. C., ET AL., APPELLANTS**

v.

UNITED STATES OF AMERICA, APPELLEE

**Appeal from a Decree of the United States District
Court for the District of Columbia**

BRIEF FOR APPELLEE

COUNTER-STATEMENT OF THE CASE

A. General Statement

Appellants, claimants below, appeal from a Decree of Condemnation, entered after a jury verdict, ordering the destruction of a misbranded electrical device, intended for use in the diagnosis, prevention, treatment, mitigation, and cure of disease. Specifically, the device, which is called a Hubbard Electrometer,¹ was charged to be and found misbranded within the meaning of two sections of

¹ The device is variously known as the "Hubbard Electrometer", the "Hubbard E-meter," the "Hubbard Electropsychometer," the "Electrometer," the "E-Meter", and the "Electropsychometer." All will be referred to in this brief as "the E-meter".

the Federal Food, Drug, and Cosmetic Act,² 21 U.S.C. 352(a), in that its labeling contained false and misleading representations, and 21 U.S.C. 352(f)(1), in that its labeling failed to bear adequate directions for use.

Appellants' brief divides, essentially, into two parts.

First, it attacks the procedure leading to the institution of this case, contending that this is a religious persecution against the corporate appellant, the Founding Church of Scientology of Washington, D.C., Inc., and its adherents. It is asserted that this case, its institution, and the execution of the warrant of attachment, were violative of appellants' rights of freedom of press and religion under the First Amendment, and of their rights under the Fourth Amendment to be protected from unreasonable searches and seizures.³ This, they maintain, makes the proceeding void *ab initio*.

In the second part of the brief, appellants attack the sufficiency of the evidence to support the jury verdict, the trial procedure, and the Decree of Condemnation.

We contend here, as below, that there has been no violation of any of appellants' constitutional rights. And, we contend here that the trial was fair, the evidence amply supported the verdict, and the Decree of Condemnation was properly entered.

Because the appellants place such heavy emphasis on the religious and search and seizure arguments, we shall present a detailed counter-statement of the facts.

B. Background

1. Previous Seizure Action

On May 7, 1958, a Libel of Information was filed in the United States District Court for the District of Columbia, *United States v. * * * Dianezenne*, D.C. 10-58,⁴

² Hereafter referred to as, "the Act."

³ They also assert Fifth Amendment rights.

⁴ Pursuant to Section 304 of the Federal Food, Drug, and Cosmetic Act.

against two drums of 21,000 tablets, and six bottles of a drug labeled, "Special Anti-Radiation Compound (Dianezen)", in the possession of the Distribution Center, Inc.⁵ [Tr. 1194-5; J.A. 206-7; Official Drug Notice of Judgment 5757, issued pursuant to Section 705(a) of the Act, 21 U.S.C. 375(a) (Appendix to this brief)]. A Default Decree of Condemnation provided for destruction on October 1, 1958.⁶ [J.A. 207, 288-90].

2. The Follow-Up Food and Drug Administration Investigation in 1959

On March 15, 1959, Taylor M. Quinn, United States Food and Drug Administration Resident Inspector, Washington, D.C., was assigned to visit the premises of the corporate claimant "as a casual citizen [to] find out what they had to say." [Tr. 1160-1; J.A. 193-4]. He "was told [by his superiors] to go in as an ordinary citizen and say that [he] was interested in Scientology and see what developed." [Tr. 1194; J.A. 206].

While the place looked like a house from the outside, inside was a fairly small meeting hall [Tr. 1160-1; J.A. 193-4]. Mr. Quinn walked into a public meeting [Tr. 1193; J.A. 206]. He and 30 or 40 other people were shown a film and a few simple mathematical tricks; a collection was made for a building fund [Tr. 1161; J.A.

⁵ A wholly-owned subsidiary of the corporate appellant [Tr. 379, 458-480; J.A. 99, 106].

⁶ The charges were that the drug was adulterated within the meaning of 21 U.S.C. 351(c) in that its strength differed from that which it purported and was represented to possess in that it contained less than the declared amounts of vitamin B₁, ascorbic acid, and iron; and, misbranded within the meaning of 21 U.S.C. 352(a), in that the statement, "Special Anti-Radiation Compound" was false and misleading because the article was not effective for preventing and treating harmful effects caused by exposure to radioactivity, and the article contained less than the declared amounts of vitamin B₁, ascorbic acid, and iron.

See also: *All About Radiation*, pp. 91 et seq. [Government's Ex. 28], where "Dianezen" is extolled as a cure for radiation, cancer and colitis.

194]. He told a man named Eliot he was interested in Scientology, was given some free literature, and he purchased a book [Tr. 1161-3; J.A. 194-5]. He identified himself as Taylor Quinn, an employee of the Department of Defense, living in Arlington, Virginia; he actually lived in Falls Church [Tr. 1171-2; J.A. 197-8].

Mr. Quinn returned a day or so later and discussed with Mr. Eliot the various Scientology courses available [Tr. 1163-5; J.A. 195-6]. Later, he signed up for the Apprentice Scientist course for a cost of \$50 [Tr. 1165; J.A. 196] and signed some documents, which he was told he must sign if he wanted to take the course [Tr. 1166-7; J.A. 197].⁷ He also took a number of tests, the American Personality Analysis [Tr. 1176; J.A. 200] and the California Capacity questionnaire and 12 other sheets of tests [Tr. 1177; J.A. 200] which, claimants' counsel pointed out, contained "inquiries about whether [he] had earlier had any particular physical diseases" [Tr. 1172; J.A. 198].

Mr. Quinn began his course the next Monday. On that day he was directed to Mr. Fudge, and then to a Mr. Townsend, who introduced him to his class of three or four other people [Tr. 1173; J.A. 198-199]. The course was to have lasted two weeks, six days a week, but Mr. Quinn only went five days because his "supervisors decided they had other things for me to do;" so he quit [Tr. 1174; J.A. 199].

The books and pamphlets he purchased, as well as his reports on his visits were turned over to the Baltimore District of FDA [Tr. 1189-91; J.A. 203-05]. All this occurred three and a half years before the inspection relevant to the present case. Mr. Quinn was subsequently told by his superiors that "what I heard and saw there had no bearing on any violation of our law." [Tr. 1197; J.A. 208].

⁷ Some eight years later, claimants' counsel produced Mr. Quinn's contract and tests at the trial. Mr. Quinn could not identify his signature, or printing, on the documents he was shown. As he pointed out, while it looked like his writing and printing, "it is easy enough to trace a signature" [Tr. 1167; J.A. 197].

3. *The 1962 Inspection*

On October 17 and 18, 1962, Food and Drug Inspectors Charles H. Everline and Michael F. Karpers [Tr. 98; J.A. 67] made an inspection of the Distribution Center, Inc. and Hubbard Communications Office [Tr. 91-2; J.A. 65-6].⁸ The inspection was made pursuant to assignment from the Chief Inspector, Baltimore District [Tr. 151; J.A. 72], and Deputy Commissioner of Food and Drugs [Tr. 152; J.A. 73]. They were instructed to determine (1) whether Dianezene was being handled or if there were plans to handle the product [Tr. 152; J.A. 73], and (2) the manner in which the E-meter was being sold and promoted [Tr. 151; J.A. 72].

The inspectors introduced themselves, stated they wished to make an inspection, and showed their credentials to Mr. Bonnie B. Turner, who stated he was in charge of the Distribution Center, Inc. and Hubbard Communications Office [Tr. 92-3, 159; J.A. 65-6]. They issued a Notice of Inspection to Mr. Turner [Tr. 129-30, 159; J.A. 70; Ex. 4, 5].

Mr. Turner explained the functions of the various interlocking organizations. The Distribution Center, Inc. [DCI], a Maryland corporation, sold and disseminated information on Scientology to members and to the general public; this included pamphlets, books, literature, and the E-meter [Tr. 100]. The Hubbard Communications Office [HCO], an affiliate of the Founding Church of Scientology [FCS], was to maintain lines of communication between L. Ron Hubbard and the various organizations in Scientology [Tr. 105; J.A. 67]. The oldest of the organizations was the Hubbard Association of Scientologists [HASI], a District of Columbia corporation; payment of membership dues entitles one to a monthly magazine called "Ability" [Tr. 105-6; J.A. 67-8]. The Church was a District of Columbia corporation, which had branches called the Hubbard Academy of Scientology [Academy]

⁸ Pursuant to Section 704 of the Act, 21 U.S.C. 374.

and the Hubbard Guidance Center [Guidance Center] [Tr. 106; J.A. 68].⁹

The inspector saw statements on the bulletin board that the purpose of the Academy was to train the best auditors in the world [Tr. 125; J.A. 69-70] and the purpose of the Guidance Center was to do more for peoples' health and ability than has ever before been possible [Tr. 126; J.A. 70].

The inspectors saw E-meters of various types throughout the four buildings [Tr. 131; J.A. 70]. Mr. Turner explained that there were two basic categories of meters—the older American models in the metal boxes and the various English models in the wooden boxes, the Mark I, II, III and IV models [Tr. 134; J.A. 71]. The retail cost of an E-meter was \$125 [Tr. 111; J.A. 68]; the wholesale cost to DCI was \$47 [Tr. 134; J.A. 71].

One of the Mark IV meters was demonstrated to the inspectors by Mr. Harris Richardson Angell, Special Director of Training, Hubbard Academy of Scientology [Tr. 95; J.A. 66]. The person using the meter (the auditor) sat behind it so he could read the dial and use the knobs [Tr. 97-8; J.A. 66-7]. A cord is plugged into the right side of the meter and this was attached by two alligator clips to tin cans, which are held by the person being "processed" [Tr. 98; J.A. 67].

Mr. Turner stated the E-meter was used by auditors in processing people [Tr. 111; J.A. 68]; people were processed at the Guidance Center [Tr. 123-4; J.A. 69]. Mr. Angell explained that anyone who was interested could be and was admitted to the Guidance Center for processing; this included the treatment of people with psychosomatic illness [Tr. 123-4; J.A. 69]. Mr. Fudge, Organization Secretary and Assistant Pastor, told the in-

⁹ The Guidance Center is the processing division of the corporate claimant [Tr. 559; J.A. 124-5]. "Processing" (also called "auditing") is the procedure by which a Scientology practitioner, called an auditor, purports to deliver the claimed benefits of Scientology to persons undergoing the processing. Processing is described in detail at pages 9-10, 12-13, below.

spectors that persons could be admitted to the Academy or Guidance Center without having any interest in or joining the church [Tr. 127; J.A. 70].

The inspectors purchased numerous publications from the basement of 1812-19th Street, N.W. [Tr. 135, 140, 146-7; J.A. 71-2]. The stock clerk of DCI told them the publications were then in use [Tr. 158; J.A. 75-6], and were for sale [Tr. 255].

The total time the inspectors spent on the inspection and subsequent visits was between seven and eight hours covering parts of two days [Tr. 255].

4. The Initiation of This Legal Action

On January 4, 1963, this action was instituted by the filing of a Libel of Information alleging that the E-meter was misbranded within the meaning of the Act because of false and misleading statements in accompanying labeling [21 U.S.C. 352(a)] and because that labeling failed to bear adequate directions for use of the device [21 U.S.C. 352(f)(1)] for all the purposes intended [J.A. 1-6].

That same day, pursuant to a Warrant of Attachment issued by the District Court, a number of E-meter devices, the *res* of this action, and a quantity of accompanying literature, were seized on the premises of 1810, 1812 and 1827-19th Street, N. W., and 1907 S Street, N. W., Washington, D. C. The United States Marshals separated into groups to execute the Warrant at the several addresses; each group was accompanied by a United States Food and Drug Inspector.

The warrant of attachment was served at the outset of the visit, and it was explained that the purpose of the visit was to execute the warrant of attachment for the E-Meters and the specified literature [J.A. 38, 41, 44, 46]. During the course of the visit, the warrant was also shown to Mr. Oscar H. Brinkman, attorney for the appellants. Mr. Brinkman acknowledged that the Marshals could not be resisted in executing the warrant, and so informed Mr. Fudge and Mr. Angell [J.A. 39].

There were some newspaper reporters and photographers in the vicinity at the time. The press representatives were not seen entering any of the premises beyond the doorway of 1810, nor did the Marshals or Inspectors converse with the pressmen [J.A. 41].

Meters and literature were found and collected throughout the buildings. Some were in open satchels and briefcases; others were hidden under a clothesrack, in the back of a softdrink dispensing machine, on fireplace mantels, in desk drawers, in closets, in filing cabinets, in suitcases, in cabinets and bookcases, in packages and boxes in stock rooms, and even on the fire escape outside of one buliding [J.A. 40, 42, 43, 45, 47].

During the execution of the warrant, persons tried to leave the premises by going up an alley with devices under their arms or under their coats. In one instance, a number of meters were observed by an inspector in open satchels under a coat rack. Within moments, while the inspector had stepped away, the meters had disappeared [J.A. 42].

Each person from whom a meter was personally collected was asked if he would like to put his name or some other identification on the particular article involved and many did so [J.A. 41-3; 45].

The Marshals exercised no physical force, searched no one, made no threats of violence or coercion, and did not display or draw any firearms. Nothing was disturbed in any part of the buildings anymore than was necessary to remove the meters and literature found. Except for the confusion caused by large numbers of persons—many of them talking at once—there was no undue confusion or noise during the entire visit [J.A. 40, 47].

On February 25, 1963, claimants filed a Motion to Quash Attachment and Monition, Et Cetera, to Require Return of Seized Property, and to Dismiss the Libel of Information on the grounds that (1) the seizure of the E-meters and labeling was unreasonable and in violation of the Fourth Amendment; and (2) the seizure of the

E-meters and labeling was an interference with the free exercise of religion and freedom of the press. That motion was denied by Judge Youngdahl on July 3, 1963 [J.A. 48].^{9a}

Answers were filed on July 31, 1963. Various affirmative defenses were asserted and the same objections as in the Motion to Quash, Etc. were reasserted. The government then filed a Motion to Strike Portions of the Answer. That motion was denied by Judge Tamm on September 27, 1963, "solely for the reason of permitting the claimants to contend for these defenses in any appellate proceeding" [J.A. 56-7].

On October 5, 1964, claimants filed a Motion to Quash Attachment of Books, Pamphlets, and Other Printed Matter and to Return Such Property to Claimants, on the grounds that (1) the seized written, printed and graphic matter was neither a device nor labeling within the meaning of the law; and (2) that the seizure of the labeling was in violation of claimants' constitutional rights under the First, Fourth and Fifth Amendments to the Constitution of the United States. That motion was denied by Judge Tamm on October 28, 1964 [J.A. 58].

5. *The Trial*

Trial before a jury began on April 3, 1967.

a. *The Government's Case*

Exhibit 1, the Mark IV E-meter, consists of a small wood cabinet or box containing a meter on which are placed a number of dials which can be set at numbered or lettered positions. Attached to the cabinet when in

^{9a} Judge Youngdahl ruled that "the search and seizure attacked by the Claimant was unobjectionable under the Rules of Practice in Admiralty and Maritime Cases and under other legal and constitutional principles," and that "claimant's contention that said search and seizure and this libel violate the First Amendment's guarantees of religious liberty is more properly asserted as a matter of defense at the trial" [J.A. 48].

use are the wires [Exhibit 3]¹⁰ which connect to a set of soup cans [Exhibit 2].

The directions for use [e.g., Exhibit 7, 9; Claimants' Exhibit 7] call for the device to be "calibrated" in an effort to insure consistent results. Miss Routsong explained that when a person is audited, he is required to hold the cans one in each hand [Tr. 499; J.A. 112]. The wires from the cans are plugged into the E-meter; the device is then turned on by turning the switch clockwise to the number 16. The tone arm is then turned to the number two in order to calibrate the machine. The switch over which is printed the words, "set, transit and test," is then turned from transit to set, then to test to check the batteries. [Tr. 500-502; J.A. 113-4]. Processing then begins.

Dr. J. I. Lacey, Chairman of the Department of Physiology and Neurophysiology, Fels Research Institute, Yellow Springs, Ohio, testified that the E-meter is an instrument that will measure roughly the electrical resistance of the skin [Tr. 178, 182; J.A. 76-7]. He stated that the E-meter is a rather poor instrument [Tr. 184; J.A. 77]; that it is not a quantitative instrument [Tr. 194; J.A. 80]; and, in fact, the reading of the dial is a function of how firmly the individual is grasping the cans [Tr. 192; J.A. 79]. Dr. Lacey also explained that any skin resistance responses might be produced by a wide variety of stimuli [Tr. 196; J.A. 80-1], including thermal changes in environment such as heat, a noise in the room, a flashing light, a sudden pain in the tooth, a sudden increase in muscular tension, a random thought, mental effort, and emotional reactions [Tr. 197; J.A. 80-1]. Response on the E-meter would indicate either that a variety of these stimuli had occurred or there had been additional pressure on the cans [Tr. 228-9; J.A. 81-2].

Mr. George Franklin Montgomery, Chief, Measurement Engineering Division, National Bureau of Standards [Tr.

¹⁰ The government's exhibits will be referred to as "Exhibit 1," et seq. Claimants' exhibits will be prefaced with the word, "Claimants."

274; J.A. 85], testified about the mechanism of action of the device from the viewpoint of the electronics engineer. He stated the E-meter appeared to be designed to measure changes in resistance of any body which conducts electricity. When a person holds the cans connected by two clips and the wires are plugged into the input jack in the instrument, the instrument senses small changes in current which are amplified, causing a change in position of a pointer on the meter scale [Tr. 277; J.A. 85]. The E-meter does not measure changes in skin resistance; it merely indicates such changes [Tr. 286; J.A. 88].

He found the device deficient because its scale was not calibrated in terms of the electrical units of resistance, the ohm [Tr. 278-9; J.A. 86]. He also found the controls were such that they interacted [Tr. 280; J.A. 87]. Employees of the National Bureau of Standards had prepared circuit diagrams of the Mark IV and Mark V E-meters [Tr. 282, 284; J.A. 87]. There are no essential differences between the two devices electrically [Tr. 284; J.A. 87].

Robert J. Kennedy, Physicist, United States Food and Drug Administration [Tr. 287; J.A. 88], reviewed and relied upon E-meter Essentials [Exhibit 7] and The Hubbard Electrometer [Exhibit 9], as well as a patent application, in making his examination [Tr. 290; J.A. 88-9].

He found a range of 500,000 ohms in the tone arm [Tr. 296; J.A. 89] and determined that the range of sensitivity was also in agreement with the patent. His examination also showed how the squeezing of the cans and variations in the contacts between the hands and the cans would give a variation in the movement of the meter needle [Tr. 297; J.A. 89]. He found it impossible to get a center on the meter according to the instructions and, if there was a centering, it would only hold for the one very specific setting of the combination of all the knobs which produced that centering [Tr. 298; J.A. 90].

He stated the device would indicate a relative change of resistance but would not be an accurate measurement

because there was no fixed voltage and the controls were so interdependent that each control affected the position of the meter needle. [Tr. 299-300; J.A. 90-1].

The government read into evidence the deposition of Miss Marilyn E. Routsong, Trustee and Treasurer of the corporate claimant [Tr. 343, 366; J.A. 96], and of the California Scientology Corporation [Tr. 349], Treasurer and Member of the Board of Directors of the Distribution Center, Inc. [Tr. 361; J.A. 96], and claimant of Mark V E-meter 1483/3 [Tr. 366], to show how the device was intended to be used.

Miss Routsong testified that processing and auditing are synonymous terms [Tr. 490; J.A. 110] for the procedure by which an auditor processes a pre-clear, who is a person undergoing processing for the purpose of becoming clear, the goal of Scientology [Tr. 491; J.A. 110]. Her testimony established that the claimed benefits of "processing" are many.

Miss Routsong said that Scientology teaches, and the literature states, that processing alleviates and cures arthritis [Tr. 555, 589; J.A. 122, 132], ulcer, toothache, impotency, nervous tension, depression, heart trouble, bursitis [Tr. 557-8, 602; J.A. 123-4, 136-7], 70 percent of man's illnesses and sicknesses [Tr. 582-3, 603; J.A. 128-9, 137-8], cancer [Tr. 555; J.A. 123], senility [Tr. 607; J.A. 140], psychoses [Tr. 640; J.A. 146], bruises [Tr. 640a-641; J.A. 146-7], hypertension, combat fatigue, tuberculosis, arrested myopic astigmatism [Tr. 644; J.A. 147], and apathy [Tr. 645; J.A. 147-8]. She said that processing improves defective eyesight, totally [Tr. 557; J.A. 123-4]; that processing alters the shape of the body, i.e., a withered arm will grow out [Tr. 583-4; J.A. 128-9], obesity is altered [Tr. 598; J.A. 135], the color of one's eyes will change from murky brown to blue [Tr. 599; J.A. 135], and an adult has been known to grow eight inches overall, overnight [Tr. 599; J.A. 135-6]. Miss Routsong also said that processing will eradicate physical illness [Tr. 580; J.A. 127-8] and physical malformations [Tr. 597; J.A. 135]. Also, that processing

alleviates or relieves burns received from atom bombs [Tr. 588; J.A. 131-2], toothache [Tr. 596; J.A. 134-5], and colds, occlusions, arthritis, and psychosomatic ills¹¹ [Tr. 605; J.A. 138-9].

Miss Routsong further stated that, as set forth in the literature, processing can substantially increase the pre-clear's intelligence quotient (or I.Q.) one point per hour of processing [Tr. 608, 665; J.A. 140-1, 148], or expedite the healing of a crushed hand, cracked collarbone and burns [Tr. 609, 610; J.A. 141], or cause a person's high temperature to drop substantially [Tr. 650-1; J.A. 148]; can remove cataracts [Tr. 680; J.A. 150], or can make a person radiation proof [Tr. 682; J.A. 151].

And, all of this is done with an E-meter [Tr. 592, 597; J.A. 133-4, 135].

Miss Routsong explained that the E-meter is the instrument used in processing in Scientology [Tr. 497; J.A. 112], which aids the auditor in his line of questioning during which the pre-clear uncovers his past experience [Tr. 506; J.A. 116]. It is a tool, an assistance, an aid in the auditing process [Tr. 508-9; J.A. 117-8], which will read basal metabolism [Tr. 604; J.A. 138].

This tool in the clearing process [Tr. 608; J.A. 140] must be utilized to audit effectively [Tr. 666-7; J.A. 149]. Before final clearing is reached, the E-meter is indispensable, essential and necessary [Tr. 512, 546; J.A. 118-9]. Miss Routsong stated that an auditor uses an E-meter to clear a pre-clear [Tr. 510; J.A. 118], and that an auditor cannot clear people without an E-meter [Tr. 511; J.A. 118]. She testified that the only use for an E-meter is in "clearing" [Tr. 669c-669d; J.A. 149] or "auditing" and "processing" [Tr. 670; J.A. 149].

Miss Routsong's testimony about the intended use of the device was corroborated by that of Mr. Will N. Swain,

¹¹ A psychosomatic ill, in Scientology parlance, includes "[a]rthritis, bursitis, tendonitis, myopia, astigmatism, bizarre aches and pains, sinusitis, colds, ulcers, migraine headaches, toothache, poliomyelitis deformities, fatness, skin malformations are a few of these." Advanced Procedure and Axioms, Exhibit 39, p. 45.

an official of the United States Food and Drug Administration, who had read all the literature that was seized and several other pieces that were related but not seized [Tr. 727; J.A. 161-2], a total of 25,000 to 27,000 pages [Tr. 728; J.A. 162]. Mr. Swain read passages from the literature to the jury.

The government then presented expert medical testimony to show that the E-meter was of no value in the diagnosis, treating or cure of disease of man. Dr. Thomas McPherson Brown, Chairman, Department of Medicine, George Washington University School of Medicine, testified that skin resistance measuring devices are not a part of acceptable medicine [Tr. 979; J.A. 172]; and that the E-meter has no use in diagnosing, treating or curing disease [Tr. 980; J.A. 172-173]. These opinions were concurred in by Dr. Walter Lesley Henry, Jr., Chairman, Department of Medicine, Howard University School of Medicine [Tr. 1080-81; J.A. 183-4]. Dr. Leon Yochelson, Chairman, Department of Psychiatry, George Washington University School of Medicine, testified that instruments that measure skin resistance are not useful in the diagnosis, treatment or cure of persons with emotional or psychological problems [Tr. 1036]. He stated that the E-meter is a crude skin galvanometer [Tr. 1037; J.A. 180], which has no use in the diagnosis, treatment, or cure of the emotional or psychological problems of man [Tr. 1038; J.A. 181]. These opinions were shared by Dr. Richard Steinbach, Chairman, Department of Psychiatry, Georgetown University Medical Center [Tr. 1102; J.A. 191], who further testified that the E-meter is of no use in reading or measuring the basal metabolism, or in improving the intelligence quotient of man [Tr. 1127-8; J.A. 192].

b. Claimants' Case

Claimants' case was in two parts. First, claimants, out of the presence of the jury, called several employees of the United States Food and Drug Administration, and

placed a deposition and proffers in the record in an effort to establish violations of claimants' constitutional rights, namely, the alleged "persecution" of Scientology and an immunity from the requirements of the Federal Food, Drug, and Cosmetic Act due to the asserted exemption of the claimants because of their freedoms under the First, Fourth, and Fifth Amendments.

Judge Sirica denied claimants' renewed motions to quash and dismiss, etc. [Tr. 1221; J.A. 215], as Judges Youngdahl and Tamm had done before.

Claimants then called two witnesses before the jury. The first was John Leslie Fudge, who testified that the Hubbard E-meter came into existence the latter part of 1957 [Tr. 1263; J.A. 216], and that he first saw the device in February 1958 [Tr. 1262; J.A. 216]. He said that the literature referred to and was applicable to the Hubbard E-meter [Tr. 1283; J.A. 217], although it was his "impression" that the literature written before 1958 referred to the Volney Mathison Electropsychometer [Tr. 1265; J.A. 216-7]. He agreed that the Hubbard E-meter could do everything that the so-called "previous" meters could do [Tr. 1290; J.A. 218]. He did not know the differences, if any, between the Mathison Electropsychometer and the Hubbard E-meter [Tr. 1290-1; J.A. 218-9].

Claimants' other witness was Miss Eunice Ford, an individual claimant, who read passages from the literature disclaiming any interest on behalf of Scientology in healing or in invading the province of medical science.

There was no testimony to controvert the government's evidence about the device and its usefulness as a medical treatment.

The jury found the E-meters misbranded on April 19, 1967 [Jury Verdict; J.A. 227].

The Decree of Condemnation was signed by Judge Sirica on June 28, 1967 [J.A. 228-70]. Appellants then filed Motions for Judgment Notwithstanding the Verdict and for a New Trial [J.A. 271-2]; those Motions were denied on August 28, 1967.

This appeal followed.

SUMMARY OF ARGUMENT

I. Seizure actions under the Act have always been considered to be civil actions based upon the power of Congress to close the channels of interstate commerce to articles in violation of the Act which are deemed to be contraband *per se*. They are not criminal or quasi-criminal "forfeiture proceedings." Nor are they "searches" and "seizures" within the meaning of the Fourth Amendment. Consequently, there is no requirement that the civil warrant of attachment be based upon a finding of probable cause, or that the libel be verified, or that the libel state anything other than that the res, which is in violation of the Act, is or will be within the District of Columbia. The facts clearly establish that the United States Marshals executed the civil warrant of attachment in a constitutionally reasonable manner. And the facts establish beyond peradventure that there was no "spy in the church". The Government violated none of appellants' rights by having a Food and Drug inspector visit appellants' business premises as an ordinary citizen, without informing appellants he was a Food and Drug inspector, to determine whether any products were being distributed or sold by appellants in violation of the Act.

II. The E-meter is not "excused" from compliance with the requirements of the Act because of appellants' freedom of religion. Whether the appellant corporation is a church, Scientology is a religion, and the individual appellants believe in Scientology as a religion, are all irrelevant here. There is no constitutional right for members of a religious organization to violate the law. Where, as here, appellants do not deny that the E-meter is used by and on persons who are members of the general public, and the device is proven to be misbranded within the meaning of the law, appellants' adherence to the religion of Scientology is no excuse.

III. An instrument, apparatus or contrivance which is intended for use in the diagnosis, mitigation, treatment, and cure of disease is a "device" as defined by the Act.

Here, the evidence established that the article was intended for use in processing people to achieve the state of "clear," which results in the complete absence of mental and physical aberrations. This processing, along the way to clear, is claimed to be effective to treat and cure a minimum of 70 percent of the diseases of man. The E-meter used in "processing" is, thus, intended for use in the treatment [processing] of disease and is a device within the meaning of the Act. Processing, with the E-meter, is of no value in the diagnosis, treatment or cure of the diseases of man. Thus, the E-meter is misbranded within the meaning of the Act.

IV. Whether a given pamphlet, booklet, leaflet, etc. is or is not accompanying labeling for a given device within the meaning of the Act is determined by the functional interdependence between the literature and the device. If, as here, literature is *used* to promote the sale and distribution of the E-meter and/or processing with an E-meter, it accompanies the E-meter in the statutory sense and is labeling for the E-meter regardless of the date on which the literature was written and/or copyrighted viz-a-viz the date the E-meter was "created."

ARGUMENT

I. This is a civil action in rem.

A. Boyd v. United States, 116 U.S. 616 (1886) and *One Plymouth Sedan v. Pennsylvania*, 380 U.S. 693 (1965)
Do Not Require That This Case Be Reversed.

Appellants' false premise, woven through their brief, is that this is a criminal or quasi-criminal forfeiture proceeding within the rule of *Boyd v. United States*, 116 U.S. 616 (1886) [Brief, p. 19] and *One Plymouth Sedan v. Pennsylvania*, 380 U.S. 693 (1965) [Brief, p. 20]. Claimants are in error. *Boyd* and *One Plymouth Sedan* are inapplicable to seizure actions under the Federal Food, Drug, and Cosmetic Act.

Section 304 of the Act, 21 U.S.C. 334, declares that any misbranded device in commerce shall be subject to seizure and condemnation in any district court in the jurisdiction of which it is found. The Supreme Court long ago held that the seizure section rested upon the clear power of Congress to close the channels of interstate commerce to such "outlaws of commerce". *Hipolite Egg Co. v. United States*, 220 U.S. 45, 58 (1911). Further, 21 U.S.C. 334 has been specifically declared as constitutional. *United States v. Olsen*, 161 F.2d 669 (C.A. 9, 1947), and cases cited in fn. 9, cert. den. 332 U.S. 768 (1947).

It also is established that seizure actions brought, as here, under Section 304(a) of the Act, 21 U.S.C. 334(a), are not "searches" and "seizures" within the meaning of the Fourth Amendment. They are civil attachments *in rem*, pursuant to a lawful judicial writ, predicated upon the power of Congress to remove violative articles—i.e., contraband—from the channels of interstate commerce. *Hipolite Egg Co. v. United States*, *supra*; *McDermott v. Wisconsin*, 228 U.S. 115 (1913); *Seven Cases of Eckman's Alterative v. United States*, 239 U.S. 510 (1916); *443 Cans of Frozen Egg Product v. United States*, 226 U.S. 172 (1912); *United States v. 2000 Cases . . . Knox Gumbush Co.*, 352 F.2d 344 (C.A. 3, 1965), cert. den. 383 U.S. 913 (1965); *United States v. 935 Cases . . . Tomato Puree*, 136 F.2d 523 (C.A. 6, 1943), cert. den. sub. nom. *Ladoga Canning Co. v. United States*, 320 U.S. 778 (1943); *United States v. 75 Cases . . . Peanut Butter*, 146 F.2d 124 (C.A. 4, 1944), cert. den. 325 U.S. 856 (1945); *United States v. 62 Packages . . . Marmola Prescription Tablets*, 48 F. Supp. 878 (W.D. Wis., 1943), aff'd. 142 F.2d 107 (C.A. 7, 1944), cert. den. *Raladam Co. v. United States*, 323 U.S. 731 (1944); *United States v. 18 Cases of Tuna Fish*, 5 F.2d 979 (W.D. Va., 1925).

Boyd and *One Plymouth Sedan* do not place seizure actions under the Act in a different status. In *Boyd*, the Supreme Court held unconstitutional a statute which required the defendant, on motion of the government, to produce his *private* books, invoices, and papers, or else

the allegations of the government were to be taken as confessed. The action was brought against the Boyds to forfeit the merchandise involved pursuant to Section 12 of the 1874 Revenue Act, which provided that any importer, etc. who, with intent to defraud the revenue, made or attempted to make an entry of imported merchandise by means of a fraudulent or false invoice, so that the United States was deprived of lawful duties, would be fined between \$50 and \$5,000, subjected to imprisonment up to two years, or both, and, in addition, the merchandise would be forfeited. In deciding as it did, the Court specifically stated that "things which it is unlawful for a person to have in his possession, such as counterfeit coin, lottery tickets, implements of gambling, etc." are in a different category [116 U.S. at 623-4].

In *United States v. 935 Cases . . . Tomato Puree, supra*, [136 F.2d, at 526], the Sixth Circuit specifically pointed out that the *Boyd* case has no applicability to a seizure action under 21 U.S.C. 334 which is a civil proceeding; and, that the two situations are further distinguishable as the basis of the *Boyd* "decision was that the case was criminal in character" and that "[t]he ruling was merely that the order for the production of the invoices was, under the Fourth Amendment, unreasonable in the circumstances of the case." Accord: *United States v. 75 Cases . . . Peanut Butter, supra*.

Private papers, such as involved in *Boyd*, are in no way part of this case. Indeed, the device and literature were available for sale to anyone who wished to buy [e.g., Tr. 547, 570-1; J.A. 119, 126].

In *Plymouth Sedan*, the Court reiterated the characterization of a forfeiture proceeding as quasi-criminal because "[i]ts object, like the criminal proceeding is to penalize for the commission of an offense against the law." [380 U.S., at 700]. The *Boyd* theory was applied to forfeiture of automobiles used in illegal transportation of intoxicating liquors.

However, the Court pointed out that both *Boyd* and *Plymouth Sedan* "involved property not intrinsically ille-

gal in character", [380 U.S., at 700] and stated that there is a difference between "contraband *per se* and only derivative contraband" [380 U.S., at 699].

Subsequently, the Third Circuit held that *One 1958 Plymouth Sedan* did not apply to the seizure of a device brought under the Act.

Here, the seized devices are not derivative contraband, but are, themselves, "contraband of law," "illicit articles," or "outlaws of commerce." *Hipolite Egg Co. v. United States*, *supra* [220 U.S., at 57, 58]. It was on this basis that it was held that the *Boyd-Plymouth Sedan* rationale does not apply to seizures under the Act; the *Knox Gumbush* opinion stated [352 F.2d, at 345]:

*We are of the opinion that forfeiture proceedings under 21 U.S.C.A. § 334, such as those at bar, are independent of a criminal proceeding and may be effected without regard to any person's criminal responsibility under 21 U.S.C.A. § 331 and its penalty section, § 333. Under the Pennsylvania statute, * * *, which was before the Supreme Court in the Plymouth Sedan case, it appeared that there was a guilty transporting or possession of illicit alcohol, contraband. In the light of the contrasting circumstances we cannot perceive how the proceedings against the seized articles and materials in the case at bar can be regarded as presenting any analogy to or coming within the purview of the ruling of the Supreme Court in One 1958 Plymouth Sedan v. Commonwealth of Pennsylvania, supra. * * * [Emphasis added].*

It is thus clear that the theory of *Boyd* and *Plymouth Sedan* is inapplicable here; that this action is a civil action, and not a "search" or "seizure" within the Fourth Amendment; and that *Boyd* and *Plymouth Sedan* do not compel the holding that this case be reversed.^{11a}

^{11a} We wish to point out, with further reference to appellants' assertion that no probable cause was shown of record at the time the libel was filed, that there can be no doubt that probable cause did in fact exist at that time. The seizure took place in January of 1963, but the inspection had taken place in October of 1962. In

B. There Was No Unlawful Government Search.

Appellants next complain that the information on which this action was based was "acquired in part during an unlawful government search" [Brief, p. 23].¹² They complain of the fact that Mr. Quinn, an employee of the United States Food and Drug Administration, visited the corporate appellant's premises long before the case was initiated without informing the appellants who he was and whom he worked for.

The Trial Judge rejected this contention, after hearing the testimony of the "Spy" in question [Brief, p. 24], Mr. Taylor Quinn.¹³ That testimony established, beyond peradventure, as the Trial Judge stated, that Mr. Quinn "had a right to do business with the occupant" [Tr. 1217; J.A. 213] of the premises he visited, as "an undercover agent" [Tr. 1218; J.A. 213].

the inspection—which cannot be attacked on any nonfrivolous basis—sufficient material was obtained to show probable cause, because the inspectors bought literature which contained the false claims about the E-Meter. It would be absurd to say that no probable cause existed for the seizure; there was no attempt to obtain a finding of probable cause from the District Court because the law did not and does not require such a finding in a seizure action under Section 304(a) of the Act, 21 U.S.C. 334(a).

¹² Appellants cite, but do not discuss, *Camara v. Municipal Court*, 387 U.S. 523 (1967), and *See v. City of Seattle*, 387 U.S. 541 (1967) [Brief, p. 23]. There the Supreme Court held that a homeowner [*Camara*] or businessman [*See*] may insist on a warrant as a prerequisite to a lawful administrative inspection. Those cases expressly do not preclude making an inspection pursuant to consent [e.g., *Camara*, 387 U.S., at 539; *See*, 387 U.S., at 545, fn. 6]. *Scherer v. Brennan*, 379 F.2d 609 (C.A. 7, 1967).

Here, the evidence was uncontroverted that Inspectors Everline and Karpers received permission to make the inspection on October 17 and 18, 1962, pursuant to Section 704 of the Act, 21 U.S.C. 374 [e.g., Tr. 92-3; J.A. 65-6].

¹³ We categorically deny, as we have in the past, that Mr. Quinn was a "spy". He was sent by his supervisors in the United States Food and Drug Administration as an ordinary citizen to see whether the corporate appellant was offering articles in violation of the Act [Tr. 1152, 1160-1, 1194; J.A. 193-4, 206; Claimants' Exhibits 17-19].

Judge Sirica relied on *Lewis v. United States*, 385 U.S. 206 (1966), where the Court refused to rule that the use of an undercover agent was unconstitutional *per se* [385 U.S., at 210], and held that a "government agent, in the same manner as a private person, may accept an invitation to do business and * * * for the very purposes contemplated by the occupant" [385 U.S., at 211]. Accord: *Hoffa v. United States*, 385 U.S. 293, 300-303 (1966); *Osborn v. United States*, 385 U.S. 323 (1966).

These are but recent expressions of the time-honored rule in *criminal* cases that there are "permissible stratagems involved in the detection or prevention of crime." *Lopez v. United States*, 373 U.S. 427, 434-5 (1963), whereby "government agents 'merely afford opportunities or facilities for the commission of the offense.'" *Sherman v. United States*, 356 U.S. 369, 372 (1958). If appellants are seriously seeking to "excuse" their misbranding of the seized E-meters by reason of some sort of quasi-entrapment, then they "cannot complain of an appropriate and searching inquiry into [their] own conduct and predisposition as bearing upon that issue. If in consequence [they] suffer a disadvantage [they] [have] brought it upon [them]selves by reason of the nature of the defense." *Sorrells v. United States*, 287 U.S. 435, 451-452 (1932). Any inquiry here into appellants' "conduct and predisposition" brings to mind the previous seizure action against the so-called anti-radiation pill, "Dianezen", which was misbranded and adulterated in violation of the Act.

**C. A Libel Of Information In A Seizure Action Under
The Federal Food, Drug, and Cosmetic Act Need
Not Be Verified.**

Appellants also contend they are entitled to a reversal because the Libel of Information instituting this action bore no verification other than the signature of the United States Attorney for the District of Columbia [e.g., Brief, p. 20]. But, seizure actions under the Act were governed by Rule 21 of the Rules of Practice in Admiralty and

Maritime Cases at the time of the seizure. Those Rules did not require verification. *United States v. 935 Cases . . . Tomato Paste, supra*; 2 *Benedict on Admiralty*, 6th Ed., §§ 232, 237.¹⁴

D. Failure To "Name" The Corporate Appellant In The Libel Of Information Does Not Invalidate This Action.

It is likewise asserted that because the government did not state in the Libel, or inform the District Court orally, that the corporate claimant, The Founding Church of Scientology of Washington, D.C., Inc., is a "church," this proceeding is void *ab initio* [Brief, p. 18]. Appellants are in error.

It is settled that who or what the various claimants are, or profess to be, is irrelevant to this proceeding. "[U]nder the Act, condemned goods are subject to seizure and destruction irrespective of the intent of the manufacturer." *United States v. 75 Cans . . . Peanut Butter, supra* [146 F.2d, at 128]. The only question is whether the product itself violates the law as alleged. Neither the intent, good faith, ignorance, nor awareness of wrongdoing of a claimant is relevant to the issues. *United States v. 13 Crates Frozen Eggs*, 215 Fed. 584 (C.A. 2, 1914); *Research Laboratories, Inc. v. United States*, 167 F.2d 410 (C.A. 9, 1948), cert. den. 335 U.S. 843 (1948); *United States v. 75 Cases . . . Peanut Butter, supra*; *United States v. Two Bags . . . Poppy Seeds*, 147 F.2d 123 (C.A. 6, 1945); *United States v. 30 Cases . . . "Leader*

¹⁴ Even the verification required by the then Rule 22 for cases involving suits between private litigants did not apply to the government. *Hutson v. Jordan*, Fed. Case No. 6959 (D. Me., 1837); *The MV Bull Calf*, 66 F. Supp. 1019 (D. Mo., 1946); 2 *Benedict on Admiralty*, 6th Ed., § 240.

Supplemental Rules A through F of the Federal Rules of Civil Procedure, superceding the former Rules of Practice for Admiralty and Maritime Cases, became effective on July 1, 1966. The new Rules made no change from the procedure under former Rule 21 and 22 but incorporate their substance. See Notes of the Advisory Committee, ff. Supplemental Rule C(2).

Brand Strawberry Fruit Spread", 93 F. Supp. 764 (S.D. Iowa, 1950); *United States v. 50¾ Dozen Bottles . . . Sulfa-Seb*, 54 F. Supp. 759 (W.D. Mo., 1944). Indeed, the same rule prevails in criminal actions under the Act. *United States v. Wiesenfeld Warehouse Co.*, 376 U.S. 86 (1964); *United States v. Dotterweich*, 320 U.S. 277 (1943); *United States v. Hohensee*, 243 F.2d 367 (C.A. 3, 1957), cert. den. 353 U.S. 976 (1957); *United States v. Parfait Powder Puff Co., Inc.*, 163 F.2d 1008 (C.A. 7, 1947), cert. den. 332 U.S. 851 (1948); *United States v. Kaadt*, 171 F.2d 600 (C.A. 7, 1948); *United States v. Greenbaum*, 138 F.2d 437 (C.A. 3, 1943). See also: *Smith v. People*, 361 U.S. 147 (1959), and *Marcus v. Search Warrants of Property*, 367 U.S. 717 (1961), where the Supreme Court speaks of the absolute standards of liability applicable in Food and Drug actions.

And even assuming *arguendo* that the identity of the corporate claimant is relevant and/or material to this action, it is settled that in no case is it necessary to state in a libel any fact which may constitute the defense of a claimant, or a ground of exception. Such facts are matters for affirmative defense and must be alleged in defense by the claimant.¹⁵ *The Aurora*, 7 Cranch 382 (1813); *United States v. Allan Drug Corp.*, 357 F.2d 713 (C.A. 10, 1966), cert. den. 385 U.S. 899 (1966); *United States v. An Article of Drug . . . Acnotabs*, 207 F. Supp. 758 (D. N.J., 1962); *United States v. Bodine Produce Co.*, 206 F. Supp. 201 (D. Ariz., 1962); *United States v. King & Howe*, 78 F.2d 693 (C.A. 2, 1935); *Schmidtke v. Conesa*, 141 F.2d 634 (C.A. 1, 1944); *Tobin v. Wilson*, 98 F. Supp. 131 (N.D. Ill., 1951); *Walling v. Cory, et al.*, 5 F.R.D. 81 (D. Mo., 1946).

Nor is it a fatal defect that one of the premises on which the seizure was made was not enumerated in the Libel. In an action *in rem*, it is sufficient if the Libel al-

¹⁵ The reason why the appellants are parties to this suit is that they elected to appear and defend the articles; they need not have done so.

leges generally that the *res* is or will be within the jurisdiction of the court; *in rem* jurisdiction of this Court is satisfied when the *res* is seized within the District of Columbia. *The Brig Ann.* 9 Cranch 289 (1815); *Müller v. United States*, 11 Wall. 268 (1870); *United States v. Mack*, 295 U.S. 480 (1935); *Strong v. United States*, 46 F.2d 257 (C.A. 1, 1931); *Pfeil v. United States*, 287 Fed. 265 (E.D. N.Y., 1923).

In this connection, Rule 21 of the Admiralty Rules merely required that the Libel state the "district within which the property is brought". In fact, a Libel *in rem* may be filed against a *res* not in the district and seizure may properly be made when it arrives in the district. *Warren v. United States*, 178 F.2d 919 (C.A. 2, 1949), rev'd on other grounds 340 U.S. 523 (1951). When the *res* comes within the jurisdictional limits of his District, the Marshal must execute the seizure without delay or lapse of time; and, if a vessel, even while it is under way on a river. *Witham v. The James E. McAlphine*, 96 F. Supp. 723 (E.D. Mich., 1951). Therefore the property actually having been within the District of Columbia, it is of no import that the Libel may have not listed the address of one of the premises where the device and literature were seized or the identity of a possible claimant.

E. The Marshals Executed The Warrant In A Constitutionally Reasonable Manner.

Appellants contend the actions of the United States Marshals in execution of the warrant of attachment were unlawful [Brief, pp. 24-5]. This is based upon a distortion of the facts presented in an exaggerated, garbled and confused manner; a picture is painted of the strong arm of a mighty governmental force swooping down on a tiny, defenseless minority incapable of offering even token resistance. However, as the affidavits of the United States Food and Drug Inspectors who were present show, the facts and circumstances constituting the total atmos-

phere¹⁶ of the seizure establish that what actually happened is quite different.

It is settled that in the execution of a civil process for the seizure of goods in the District of Columbia, the United States Marshal may use such force as is necessary to enable him to obey the command of the Court. *Palmer v. King*, 41 App. D.C. 419 (C.A. D.C., 1914); *Keiningham v. United States*, 109 U.S. App. D.C. 272, 287 F.2d 126 (1960); *White v. United States*, 120 U.S. App. D.C. 319, 346 F.2d 800 (1965). Here, even if the buildings which were entered be deemed dwellings, there was no forcible entry of outer or inner doors.¹⁷ This was a matter for the determination of the trial court, *Smith v. United States*, 122 U.S. App. D.C. 339, 353 F.2d 877 (1965). And, Judge Youngdahl found the search and seizure unobjectionable under the Admiralty Rules, "and under other legal and constitutional principles". [Order dated July 3, 1963, J.A. 48].

The Marshals went to the premises located at 1810, 1812 and 1827-19th Street, N.W., and 1907 S Street, N.W., to execute the warrant of attachment issued by the District Court. Their presence was explained in every case to each individual they encountered in each of the four buildings. They broke no doors. In fact, they were invited into the buildings.

During the course of the execution of the warrant, persons were stopped going up an alley with devices under their arms or under their coats. Meters were discovered not only on tables in plain view—but secreted on a fire

¹⁶ See *United States v. Rabinowitz*, 339 U.S. 56 (1950); *Go-Bart Importing Co. v. United States*, 282 U.S. 344 (1931).

¹⁷ Moreover, the Federal Food, Drug, and Cosmetic Act authorizes the seizure of goods alleged to be violative of the Act wherever found. *Lee v. United States*, 187 F.2d 1005 (C.A. 10, 1951); *United States v. 4 Devices . . . Color-Therm*, 176 F.2d 652 (C.A. 10, 1949); *United States v. 62 Packages . . . Marmola Prescription Tablets*, 48 F. Supp. 878 (W.D. Wis., 1943), aff'd 142 F.2d 107 (C.A. 7, 1944), cert. den. *Raladam Company v. United States*, 323 U.S. 731 (1944). Even in private homes, 21 U.S.C. 334; *United States v. Olsen*, 161 F.2d 669 (C.A. 9, 1947), cert. den. 332 U.S. 768 (1947).

escape and in a soft drink dispensing machine. In one instance, a number of devices were seen by an inspector in open satchels, etc. under a coat rack. Within moments, when the inspector returned with a Marshal the devices had disappeared. A large number of persons were wandering around, many talking at once. The Marshals were physically restrained from collecting the devices and literature named in the Monition.

Despite all this, the Marshals used no physical force or coercion at any time. The Marshals made no threats of physical violence or bodily harm and there was no physical violence or bodily harm. No display of firearms was made. There was no searching of the individuals on the premises.

What did occur is that the Marshals executed the warrant in an orderly manner. During the course of that execution, the Marshals found meters and literature in bookcases, briefcases, desk drawers, closets, packages, boxes, cabinets, etc. and on mantels. Since the material to be seized, named in the Monition, was sought to be concealed or made off with, the diligence of the Marshals in carefully scrutinizing the premises and the persons on the premises was proper and necessary. [See the affidavits of United States Food and Drug Inspectors Everline, Epling, Karpers, and Thiel (J.A. 35-47)].

In any event, whatever might have occurred at the time of the seizure of the goods involved in this case affords no cause for complaint. For, it is well established in civil condemnation proceedings that legal infirmities in the seizure process do not impair the right to condemnation. Even unlawful seizures by Federal officers or other persons do not defeat the action and do not result in return or suppression of evidence. *Wood v. United States*, 16 Peters 341 (1842); *United States v. One Ford Coupe*, 272 U.S. 317 (1926); *United States v. One 1956 Ford Tudor Sedan*, 253 F.2d 725 (C.A. 4, 1958), and cases cited.

Moreover, there is no serious question that can be raised concerning the inspection of October of 1962. This

antedated the seizure by more than two months. The inspectors obtained more than ample evidence to sustain the libel and the verdict, since many of the same publications were obtained at the inspection that were later seized. Proof of the charges in the libel did not depend on the evidence seized.

II. The E-Meter Is Not "Excused" From Compliance With the Federal Food, Drug and Cosmetic Act Because Appellants Are a Religious Organization and Its Members.

We wish to make it quite clear that this case does not involve any issue whether the Founding Church of Scientology of Washington, D. C., is or is not a "church", whether Scientology is or is not a "religion", or whether the individual appellants honestly believe in Scientology as a religion. We consider these questions to be irrelevant.

Our concern is whether the E-meter is a misbranded device. This was the allegation in the Libel. The jury so found. The Court entered its Decree of Condemnation, ordering the destruction of the E-meter and the literature, pursuant to its discretion as provided in the Act, 21 U.S.C. 334(d).

Appellants, however, maintain that the E-meter need not comply with the provisions of the Act; they assert that this case is a "religious persecution" [e.g., Brief, p. 27]. It is not.

Claimants' contention is based upon the mistaken belief that freedom of religion, as guaranteed by the Free Exercise Clause of the First Amendment, permits no interference regardless of the actions of the parties asserting that freedom. From this mistaken basis, they reason that because this action was brought, it must be because of the "off-beat" nature of the religion of Scientology.

But this action was brought because, as the United States proved, the E-meter is a device misbranded in violation of the Federal Food, Drug, and Cosmetic Act.

Moreover, assuming for purposes of argument the essential religious nature of Scientology and its adherents, that is no excuse. Even the right of freedom of religion is not beyond limitation. *Prince v. Massachusetts*, 321 U.S. 158 (1943). The individual may believe in any religious doctrine he wishes, but he has only limited power to act pursuant to that belief. In *Cantwell v. Connecticut*, 310 U.S. 296, 304 (1948),¹⁸ the Court succinctly stated the long-established rule that the Free Exercise Clause of the First Amendment:

* * * embraces two concepts—freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be.

The rule is that the Government may regulate the behavioral aspects of religious beliefs which constitute threats to public health and safety, morals, peace and order, and that reasonable, nondiscriminatory laws which regulate those aspects do not violate the First Amendment. *Reynolds v. United States*, 98 U.S. 145, 166-7 (1878), set out the rationale for the rule:

Laws are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices. Suppose one believed that human sacrifices were a necessary part of religious worship, would it be seriously contended that the civil government under which he lived could not interfere to prevent a sacrifice? Or if a wife religiously believed it was her duty to burn herself upon the funeral pile of her dead husband, would it be beyond the power of the civil government to prevent her carrying her belief into practice?

So here, as a law of the organization of society under the exclusive dominion of the United States, it is provided that plural marriages shall not be allowed. Can a man excuse his practices to the contrary because of his religious belief? To permit this would be to make the professed doctrines of religious belief

¹⁸ Recently quoted with approval in *School District of Abington Tp., Pa. v. Schempp*, 374 U.S. 203, 218 (1963).

superior to the law of the land, and in effect to permit every citizen to become a law unto himself. Government could exist only in name under such circumstances.

Accord: *Davis v. Beason*, 133 U.S. 333 (1890); and cf. *Mormon Church v. United States*, 136 U.S. 1 (1893); *Cleveland v. United States*, 329 U.S. 14 (1946).

The Courts have followed the rationale of *Reynolds* and have held that the religious-freedom protection afforded by the First Amendment does not excuse: polygamous marriage and/or bigamy [*Reynolds*, *Davis*, *Cleveland*]; parading without a required license [*Cox v. New Hampshire*, 312 U.S. 569 (1941)]; possession of the narcotic, peyote [*Oliver v. Udall*, 113 U.S. App. D.C. 212, 306 F.2d 819, 822, fn. 5 (1962)]; or, advocacy of non-registration and/or refusal to register for the draft, in violation of the Selective Service Act [*Baxley v. United States*, 134 F.2d 937 (C.A. 4, 1943); *Gara v. United States*, 178 F.2d 38 (C.A. 6, 1949); *Richter v. United States*, 181 F.2d 591 (C.A. 9, 1950); *United States v. Kime*, 188 F.2d 677 (C.A. 7, 1951)].

Likewise, it has been held that religion does not preclude payment of taxes on income from commercial activities, *Parker v. C.I.R.*, 365 F.2d 792 (C.A. 8, 1966), cert. den. 385 U.S. 1026, or payment of the minimum wage set by the Fair Labor Standards Act, *Mitchell v. Pilgrim Holiness Church*, 210 F.2d 879 (C.A. 7, 1954). Nor, does religion do away with the prohibition against producing and marketing wheat in excess of quotas established by the Secretary of Agriculture. *United States v. Kissinger*, 250 F.2d 940 (C.A. 3, 1958), cert. den. 356 U.S. 958. Similarly, prison discipline justifies curtailing acts by religious sects or individuals. *Evans v. Ciccone*, 377 F.2d 4 (C.A. 8, 1967); *Prince v. LaVallee*, 319 F.2d 844 (C.A. 2, 1963), cert. den. 376 U.S. 918.

And the Courts have held that religious grounds do not justify a restaurant owner not serving Negroes, *Newman v. Piggie Park Enterprises Inc.*, 256 F. Supp. 941 (D. S.Car., 1966), rev'd on other grounds, 377 F.2d

433 (C.A. 4, 1967), or a conscientious objector not reporting for civilian work when ordered to do so, *United States v. Kenstler*, 250 F. Supp. 833 (W.D. Pa., 1966), aff'd. 377 F.2d 559 (C.A. 3, 1967). Nor is freedom of religion a basis for exceeding the amount of sacramental wine available to Jewish families. *Shapiro v. Lyle*, 30 F.2d 971 (W.D. Wash., 1929).

Butler v. Kavanagh, 64 F. Supp. 741 (E.D. Mich., 1945), is the only case involving a religious-freedom question under the Act. There, the Court held the governmental interest in uniform food standards under the Act and the oleomargarine tax law was sufficient to override a Seventh Day Adventist's plea that the standard for oleomargarine required the plaintiffs to cease using any spread on their bread.¹⁹

It is clear that claimants' assertion of a right of freedom of religion is not and cannot be a justifiable excuse here, where the public health is concerned, for the misbranding of the E-meter. And, it is settled that the Act has as its purpose the protection of the public health. *United States v. Urbeteit*, 335 U.S. 355 (1948); *United States v. Sullivan*, 332 U.S. 689 (1947); *United States v. Walsh*, 331 U.S. 432 (1946); *United States v. Dotterweich*, *supra*; *United States v. Lexington Mill & Elevator Co.*, 232 U.S. 399 (1913).

The E-meters were proven to be intended to be used in the diagnosis, treatment, prevention, cure, etc. of seri-

¹⁹ State Courts have ordered the giving of a blood transfusion to a "blue baby" over the parents' claim of infringement of the free exercise of their religious beliefs, *State v. Perricone*, 137 N.J. 463, 181 A.2d 751 (1962). This procedure has been followed here in the District of Columbia. *Application for President & Directors of Georgetown College*, 118 U.S. App. D.C. 90, 331 F.2d 1000 (1964), and cases cited fn. 15, page 1007, and pages 1007-9, cert. den. 377 U.S. 978 (1964). Likewise, States have prohibited the handling of poisonous snakes as a religious practice. *Hill v. State*, 38 Ala. 404, 88 S.2d 880 (1956); *State v. Massey*, 229 N.C. 734, 51 S.E.2d 179 (1949); *Harden v. State*, 188 Tenn. 17,216 S.W.2d 708 (1948); *Kirk v. Commonwealth*, 186 Va. 839, 44 S.E.2d 409 (1947); *Lawson v. Commonwealth*, 291 Ky. 437, 164 S.W.2d 972, cert. den. 336 U.S. 942 (1942).

ous diseases, and to be sold to and used by members of the general public who are neither members of, nor interested in, the Founding Church of Scientology. And, the E-meter was proven to be misbranded in violation of the Act. Under these circumstances, it is specious²⁰ to contend that the device may be sold in such a misbranded condition because of appellants' freedom of religion.

III. The E-Meter Is a Device Within the Meaning of the Federal Food, Drug, and Cosmetic Act.

Appellants deny that the E-meter is a device [Brief, pp. 30-40]. While we agree that our evidence established the lack of efficacy of the E-meter [Brief, p. 31], this does not exempt the device from the requirements of the Act.

For purposes of this case, the definition of device found in 21 U.S.C. 321(h) is controlling because the Act contains its own glossary of definitions.²¹ *United States v. 62 Cases . . . Jam*, 340 U.S. 593 (1951); *United States v. Coca Cola Co.*, 241 U.S. 265 (1916). A "device" is defined in 21 U.S.C. 321(h) (1) as an instrument, apparatus or contrivance which is intended *for use in* the diagnosis, cure, mitigation, treatment or prevention of disease in man.

²⁰ Similarly, appellants' contention is untenable that the premises of the corporate claimant were exempt from execution of the Warrant of Attachment on the grounds of religious freedom. If this were the rule, the State would be powerless to prevent a religious organization, believing in human sacrifice as a religious rite, from engaging in such a sacrifice. But, this is not the rule. See *Reynolds v. United States*, *supra*. The E-meter was alleged to be in violation of the law and, thus, contraband. Surely, no such device is immune from seizure simply because it sits in a building housing a religious organization.

²¹ For example, while in lay parlance a thermometer would be considered a device, it is a *drug* within the meaning of the Act since it is an article listed in the United States Pharmacopoeia, 21 U.S.C. 321(g) (1); *United States Pharmacopoeia* XVII, pp. 824-826. See *AMP, Inc. v. Gardner*, 389 F.2d 825 (C.A. 2, 1968), where the Court, in holding a suture to be a new drug and not a device, emphasized that the definitions in the Act are to be given an expansive interpretation so as to protect the public health.

Whether an instrument or apparatus is a "device", as defined by the Act, depends upon its intended uses. *United States v. 23 . . . Phonograph Records*, 192 F.2d 308 (C.A. 2, 1951); S. Rep. No. 261, 74th Cong., 1st Sess. (March 26, 1938). Where, as here, the facts reveal that the E-meter is intended for use in the diagnosis or cure or mitigation or treatment or prevention of disease in man, then, as a matter of law, the E-meter is a device within the meaning of the Act. 21 U.S.C. 321(h) (1).

In determining the intended uses of the E-meter, the jury was instructed that it was not restricted to those items of written, printed, and graphic matter alleged to be, and seized as, labeling, but could consider *all* relevant sources of whatever kind [Tr. 1536], including oral representations by agents of the appellants, and statements made orally or in any circular, pamphlet, booklet, newspaper, magazine, book advertisement, advertising campaign material, etc., by anyone. *United States v. Articles of Drug . . . Foods Plus*, 362 F.2d 923 (C.A. 3, 1966); *United States v. 250 Jars . . . Honey*, 218 F. Supp. 208 (E.D. Mich., 1963), *aff'd sub nom Detroit Vital Foods, Inc. v. United States*, 344 F.2d 288 (C.A. 6, 1965); *Nature Foods Centres, Inc. v. United States*, 310 F.2d 67 (C.A. 1, 1962); *V.E. Irons, Inc. v. United States*, 244 F.2d 34 (C.A. 1, 1957), *cert. den.* 354 U.S. 923 (1957); *United States v. Hohensee*, 243 F.2d 367 (C.A. 3, 1957), *cert. den.* 353 U.S. 976 (1957); *Alberty Food Products v. United States*, 194 F.2d 463 (C.A. 9, 1952); *United States v. Sudden Change*, 36 F.R.D. 695 (E.D. N.Y., 1965).

It is not necessary that the "instrument, apparatus or contrivance" be the *only* agent utilized in the diagnosis, treatment, etc. of disease in order for the article to come within the definition of a device. It is sufficient that it is one of the modalities used. For, the definition states that a device is an article "intended for use in" the diagnosis, cure, etc. of disease. 21 U.S.C. 321(h); *United States v. 4 Devices . . . Cameron Spitler Amblyo-Syn-tonizer*, 261 F. Supp. 243 (D. Neb., 1966); *United States*

v. 110 *V. Vapozone*, 194 F. Supp. 332 (N.D. Cal., 1961); *United States v. 10 Cartons . . . 26,332 Black Tablets*, 152 F. Supp. 360 (W.D. Pa., 1957).

Nor is appellants' assertion that the E-meter is not a device because it is not intended to be used in the diagnosis or treatment of disease controlling. This contention was obviously rejected by the jury. Disclaimers on labeling have never been held to counteract false or misleading claims or intentions for use of the product. See, e.g., *United States v. Millpax, Inc.*, 313 F.2d 152 (C.A. 7, 1953); *V.E. Irons, Inc. v. United States*, 244 F.2d 34, fn. 8, (C.A. 1, 1957), cert. den. 354 U.S. 923 (1957). To allow claimants to disclaim in the future as they have in the past, after their disclaimer has been rejected, would be tantamount to stating that the trial never took place. But there was a trial. And "[N]o matter how loud and long one may disclaim that black is white, black is nevertheless black". *United States v. Nutrition Services, Inc.*, 227 F. Supp. 375, 380 (W.D. Pa., 1944).²²

Appellants really assert that the jury was wrong in believing the government's evidence and in disbelieving their version of the facts. We disagree, and there was substantial competent evidence before the jury upon which it could find as it did. Miss Routsong called the E-meter an instrument [Tr. 487; J.A. 108]. It is mounted in a small wooden box, containing a meter, an "on-off"

²² Appellants sought the return of the misbranded devices to be brought into compliance with the Act. Appellants assert our objection was based upon our "motivation" to destroy Scientology [Brief, p. 28]. The "compliance" was to be by attaching to each of the E-meters a metal plate simply stating that the E-meter is not intended for use in diagnosis, treatment, or cure of any disease. This was to remove the E-meter from the reach of the Act. We are reminded of the ingenious originator of this type of "correct" labeling. During prohibition days he sold a wine "brick" labeled substantially as follows:

Do Not Put This Wine Brick
In Water And Add Sugar
And Raisins—To Do So Would
Produce A Product Which Is Illegal

switch, and a few dials which can be set at numbered or lettered positions. In operation, the preclear [a person undergoing processing, Tr. 491; J.A. 110] holds the cans in his hands [Tr. 499; J.A. 112] and the auditor [the person processing the preclear and operating the machine, Tr. 491, 164; J.A. 110] observes the movement of the needle on the scale as the preclear answers questions asked by the auditor [Tr. 502-506; J.A. 114-116].

That the E-meter is intended to be used in the treatment, etc. of disease and is, thus, a device within the meaning of the Act, is clearly shown by the exhibits in this case which state, for example, as follows:

"* * * the goal of all Scientology therapy, is a state called clear. * * *" Sanity for the Layman; Ex. 21, p. 43.

"There is no known way to clear anyone without using a meter." E Meter Essentials 1961; Ex. 7, p. 7.

"The Hubbard Electrometer is used for clearing and only for clearing." The Hubbard Electrometer; Ex. 9, p. 53.

"* * * Processing (therapy) in Scientology * * *" Sanity for the Layman; Ex. 21, p. 50.

"Scientology processing is called 'auditing' * * *" Scientology: The Fundamentals of Thought. Ex. 31, p. 51.

"* * * By processing is meant the verbal exercising of a patient (preclear) in exact Scientology processes. * * *" Scientology: The Fundamentals of Thought. Ex. 31, p. 51.

"PRECLEAR—Technically, this covers everyone who is not a complete 'clear' * * * For our purposes, let us consider a preclear any person undergoing therapy * * * in the field of Scientology." Scientology 8-80; Ex. 22, pp. 77-78.

"* * * Modern auditing * * * can only be done with an E-meter—therefore, owning your E-meter * * * is an essential tool for the practice of auditing." Ability No. 134; Ex. 9DE; p. 10.

"Sine qua non: which, being translated, means the Hubbard Electrometer—you can't audit without it. As Ron says, you can't clear people without a meter. * * *" PAB for March 1961; Ex. 10A, p. 8.

"* * * The heart of auditing is the service facsimile." Advanced Procedure and Axioms; Ex. 39, p. 2.

"SERVICE FACSIMILE. * * * A service facsimile IS the pattern which is the chronic 'psychosomatic illness.' * * *" Advanced Procedures and Axioms; Ex. 39, p. 45.

"* * * psychosomatic illness (which include some seventy percent of the illnesses of man) * * *" L. Ron Hubbard's PAB's Book I; Ex. 17, p. 3.

"PSYCHOSOMATIC ILLNESS. * * * Technically, in this science, a chronic or continuing painful facsimile to which the preclear is holding to account for failures. Arthritis, bursitis, tendonitis, myopia, astigmatism, bizarre aches and pains, sinusitis, colds, ulcers, migraine headaches, toothache, poliomyelitis deformities, fatness, skin malformations are a few of these * * * They are traceable to service facsimiles." Advanced Procedures and Axioms; Ex. 39, p. 45.

"2. Scientology offers a therapeutic technique with which we can treat any and all inorganic mental and organic psychosomatic ills, with assurance of complete cure in unselected cases. * * *" Scientology: The Evolution of a Science; Ex. 37, p. 48. Dianetics: The Evolution of a Science; Ex. 29, p. 47.

"13. Scientology sets forth the non-germ theory of disease, embracing, * * * the cure of some seventy per cent of man's pathology." Scientology: The Evolution of a Science; Ex. 37, p. 49. Dianetics: The Evolution of a Science; Ex. 29, p. 48.

"An Academy graduate can 'heal' legally." Ability No. 55; Ex. 9AM, p. 9.

The literature thus clearly represents that Scientology, through processing with an E-meter, can and does treat and cure disease.

This interpretation of the literature is borne out by Miss Routsong's testimony. She stated that the literature involved here represents—and Scientology teaches—that through processing, the physical ills and injuries of man can be eradicated [Tr. 579-80, 589; J.A. 127-8, 132], cured [Tr. 552, 554-5, 584, 589, 601-2; J.A. 121-3, 129, 132, 136-7], altered [Tr. 590; J.A. 132-3], improved [Tr. 557, 602; J.A. 123-4, 136-7].

She further testified that the E-meter is used in processing [Tr. 501; J.A. 113], and *must* be so used [Tr. 511, 546; J.A. 118-119]. In fact, she stated that the *only* use of the E-meter is in processing [Tr. 670; J.A. 149].

Thus, inasmuch as processing (auditing) is represented as a cure, etc. of over 70 percent of the illnesses of mankind [Tr. 582-3, 601, 603; J.A. 128-9, 136-8; Ex. 10, p. 10; Ex. 31, p. 51], and the E-meter is an essential part of processing, it necessarily follows that the E-meter is a device within the meaning of the Act. The jury so found.²³

Claimants contend that the testimony of Dr. John Lacey compels the conclusion that the E-meter is a valid instrument for use as a confessional aid and not intended for the purpose of diagnosing, etc. disease [Brief, pp. 33-6]. This is wrong.

The most that Dr. Lacey could say for the E-meter is that [Tr. 178; J.A. 76]:

It is an instrument which will measure the electric resistance, whether the electrical resistance be that of an inanimate body, like a carbon resistor, or the resistance between two point on the skin.

But, he stated that he didn't think much of the E-meter as a scientific device [Tr. 246], and enumerated its most obvious deficiencies as a skin-resistance measuring device

²³ In this connection, appellants set forth in great detail the statements made by Miss Routsong [Brief, pp. 33-35] and Miss Ford [Brief, pp. 39-40] in an attempt to have the jury believe that the E-meter was a "confessional aid", and not a device intended for use in the diagnosis, treatment, etc. of diseases of man. Obviously, the jury chose to disbelieve these disclaimers.

as: it measures in ohms rather than micro-amperes as do laboratory instruments of the same general nature [Tr. 186-7; J.A. 77-8]; there is no constant current, no devices to control the constancy of current, and the variations are too great [Tr. 187; J.A. 78]; holding a can in the hand permits great variations in skin area in contact and in the number of sweat glands [Tr. 188; J.A. 78] so that the reading is not of the skin resistance, but of how firmly the individual is grasping the cans [Tr. 188; J.A. 78]; there is no way to avoid electropolarization [Tr. 188; J.A. 78-9]; machine is too responsive to skin potential; and, not a quantitative instrument [Tr. 194; J.A. 80].

Moreover, Dr. Lacey pointed out that even reading of skin resistance with good laboratory instruments is a limited research tool only, not an important medical tool, and not widely used [Tr. 232-4; J.A. 82-3]. And, contrary to claimants' allusion [Brief, p. 39], Dr. Lacey does not consider the device he invented the best there is [Tr. 243; J.A. 84]; nor does he receive any remuneration from sales of that machine [Tr. 237, 239; J.A. 84].

Obviously, Dr. Lacey's testimony establishes that, if the E-meter is supposed to be "an instrument of the type that can be and has been used to determine emotional and spiritual reactions of people being questioned or engaged in conversation" [Brief, p. 39], it has failed to achieve, and is incapable of achieving, that purpose.

Moreover, appellants completely ignore the testimony by Thomas McPherson Brown, M.D., Professor and Chairman, Department of Medicine, George Washington University School of Medicine and Hospital; Walter Lesley Henry, Jr., M.D., Professor and Chairman, Department of Medicine, Howard University School of Medicine and Freedman's Hospital; Richard Steinbach, M.D., Professor and Chairman, Department of Psychiatry, Georgetown University Medical School and Hospital; and Leon Yochelson, M.D., Professor and Chairman, Department of Psychiatry, George Washington University School of Medicine and Hospital. These men, four of the foremost physi-

cians of the District of Columbia, unanimously testified that the E-meter is of absolutely no use in diagnosing, treating, or curing disease, physical [Tr. 980, 1080-1; J.A. 172-3, 183-4] or psychological [Tr. 1038, 1102; J.A. 181, 191].

The jury obviously chose not to believe the testimony of Miss Routsong and/or the statements Miss Ford read from the literature that the E-meter and Scientology are completely divorced from use in the purported diagnosis, treatment, and cure, etc. of disease. Rather, they chose to believe the evidence of the government that the E-meter is, indeed, represented for use in the diagnosis, etc. of disease, and that the E-meter is of no value for that intended use. Claimants' defense was based on disclaimers. But, disclaimers on labeling have never been held to counteract false or misleading claims or intentions for use of the product. See, e.g., *United States v. Millpax, Inc.*, 313 F.2d 152 (C.A. 7, 1963); *V.E. Irons, Inc. v. United States*, 244 F.2d 34, fn. 8 (C.A. 1, 1957), cert. den. 354 U.S. 923 (1957).

IV. The Seized Literature Is Labeling for the Seized Hubbard E-Meter.

Appellants contend that the condemned literature is not labeling for the condemned devices because it is of historical value, does not state the E-meter will diagnose, treat, or cure disease, but that processing will, and was written before the E-meter was made [Brief, pp. 41-3]. We submit that to so define labeling is too restrictive and would enable appellants to continue the use of a worthless device in the treatment of disease. The high purposes and objectives of the Act to protect the public health are to be considered in deciding whether written, printed, or graphic matter constitutes labeling within the meaning of the Act. *United States v. 47 Bottles . . . Jenasol*, 320 F.2d 564 (C.A. 3, 1963).

Nowhere in the reported cases dealing with the statutory definition of "accompanying labeling" is there any requirement that written, printed, or graphic matter be

written contemporaneously with or subsequent to the date on which the particular product is created in order for that literature to constitute accompanying labeling for the product. Rather, it is the *use* to which the previously written, printed, or graphic matter is put which determines whether or not it is labeling.

Thus, in *Kordel v. United States*, 335 U.S. 345 (1948), the Supreme Court held that literature shipped 18 months prior to the shipment of the product was accompanying labeling for the subsequently shipped product. And, in *United States v. Urbeteit*, 335 U.S. 355 (1948), where the facts²⁴ showed that there were four or five shipments of devices several weeks apart and one shipment of literature, and the last shipment of devices was three weeks after shipment of the leaflets, and the devices were used by the consignee prior to receipt of the literature, the Court held the literature was accompanying labeling for all of the devices.

In *United States v. 250 Jars . . . Honey*, 344 F.2d 288 (C.A. 6, 1965), the labeling consisted in part of an independently published booklet entitled "*About Honey*" by an English author, one P. E. Norris, unconnected with either the products or the claimant. This booklet was given to a Food and Drug Inspector who asked for information concerning honey. The booklet discussed honey in general and made claims for its therapeutic powers for arthritis, diabetes, rheumatism, etc. It carried a selling price of one dollar. Based on the statements in that booklet, seizure was made of a large quantity of various labeling, for example, Cal's Tupelo Blossom Honey, none of which were mentioned by name in the booklet [218 F. Supp. 208 (E.D. Mich., 1963)]. The Claimant, Detroit Vital Foods, Inc., contended that in order for the seized literature to constitute labeling, it must be interdependent and actually integrated with the seized product, and it must be actually used in the distribution or sale of the particular product, in that it cannot refer to a product by

²⁴ As stated by the lower court at 164 F.2d 245, 246 (C.A. 5, 1947).

a generic term but must refer to the product specifically. These contentions were rejected.

The Court pointed out that the word "accompany" in the Act is to be given a very broad interpretation, and that since a copy of the booklet was given to the Food and Drug Inspector when he posed as a prospective customer and asked for information concerning honey, it was a permissible and reasonable inference that the literature was shown to the Inspector to induce him to purchase the honey products for sale in the store. The Court stated that the "generic" argument was without merit because to follow it "would do violence to the noble purpose of the Federal Food, Drug, and Cosmetic Act," and pointed out that, as "the Court in *United States v. Urbeiteit*, [*supra*], stated 'the problem is a practical one of consumer protection not dialectics.'" [218 F. Supp. at 212]. The Sixth Circuit affirmed on the basis of the lower Court's opinion.

The *Honey* case is not the only one in which the courts have held that written, printed, or graphic matter from an independent source, in existence apart from the product, constitutes accompanying labeling within the meaning of the Act. Thus, in *United States v. . . . "Toddlers Vitamins"*, 32 F.R.D. 32 (S.D. Ill., 1963), seizure was made of a vitamin-mineral compound offered for sale by the Century Food Company. The libel alleged that the product was misbranded, in part, due to statements in a booklet entitled "*Eat, Live and Be Merry*" written by Carlton Fredericks. Mr. Fredericks intervened in the case, contending that his booklet could not be seized as he had no knowledge of the nature of the seized articles or of Century's operation; that Century's use of the booklet to sell and promote the seized articles was not authorized by Fredericks; that he wrote only of diet and vitamins and that he didn't mention Century's product; and, that approximately 20,000 copies of his booklet had previously been sold. The Court found these contentions were without merit, stating that copies of the booklet were subject to seizure to the extent that they were used

and are being used by Century as false labeling for its products.

Likewise, in *United States v. 8 Cartons . . . "Plantation 'The Original' Molasses,"* 97 F. Supp. 313 and 103 F. Supp. 626 (W.D. N.Y., 1951), it was the use of a pre-existing book, the best seller, "*Look Younger, Live Longer*," written by Gayelord Hauser which made that book labeling for that product. There too the publisher intervened and protested seizure of its book, on the ground that the book extolled the virtues of blackstrap molasses in general—it didn't mention Plantation Brand Molasses, the publisher had no connection with the firm marketing Plantation Molasses, and he had not authorized use of the book to promote that product. All of which was true. But, the Court held the book to be labeling stating:

The seizure related not to books offered for bona fide sale but to copies of the book claimed to be offending against the Act by being associated with the article "Plantation" Blackstrap Molasses in a distribution plan in such a way as to misbrand the product.

Certainly the literature in this case stands on no better footing.

Likewise, in *United States v. Mytinger & Casselberry, Inc., Kleinfeld & Dunn: Federal Food, Drug, and Cosmetic Act 1951-1952*, p. 204 (S.D. Cal., 1951), among the written, printed and graphic matter which was used by the defendant as—and thus constituted labeling—were such things as reprints of Senate documents and magazine articles written years before; it was the use by the defendant of those articles, etc. which made them into labeling for the defendant's Nutri-Lite vitamins.

But, more important here, the literature is not merely of historical value, nor has Scientology abandoned the so-called "out-dated" literature. Rather, the evidence is that each of the seized items of written, printed, or graphic matter was, at the time of the seizure and two years

later, used to promote both the sale and distribution of the E-meter and services of which the E-meter is an integral part. Miss Routsong testified variously that the seized literature is used in connection with the Scientological movement [Tr. 386, 392, 395, 444; J.A. 100-5]; is used in connection with the purposes of Scientology [Tr. 438; J.A. 103-4]; is used in the general movement of Scientology [Tr. 439; J.A. 104]; was printed for purposes of promoting and advancing the purposes of Scientology [Tr. 456-7; J.A. 105-6]; is available upon request to the public from the Distribution Center, Inc. [Tr. 386-7, 458-80; J.A. 100-1]; was distributed through the Distribution Center, Inc. [Tr. 376, 377-8, 383, 384, 385, 438; J.A. 97-100, 103-4]; is used by Scientologists generally [Tr. 441; J.A. 104]; is used as part of Scientology [Tr. 444; J.A. 105]; is published and distributed to further Scientology [Tr. 379; J.A. 99]; and all was valid material [Tr. 445-46; J.A. 105]. This evidence was uncontroverted at the trial.

Assuming, *arguendo*, that the date on which the Hubbard E-meter came into existence is material, the seized literature is still "accompanying labeling" for the seized devices. As we understand it, the Hubbard E-meter was first used in January 1958 [Tr. 1262-3; J.A. 216]. The seized literature was all incorporated into literature written after that date. Thus, Mr. Swain testified, from literature published in 1961, that those interested in Scientology were to read all the books of Dianetics and Scientology, beginning with the so-called "Book One", the book "*Dianetics: The Modern Science of Mental Health*" [see, e.g., Tr. 841-5; J.A. 162-165]. Miss Routsong stated that the seized literature was all current in 1964 [Tr. 445-6; J.A. 105].

In this connection, on April 1 and 2, 1967, a "Realization Congress" meeting of Scientologists was held at the Washington Hilton Hotel, Washington, D.C. One of the pieces of literature available at that meeting was a book list entitled, "The Books of Scientology," which contains a reference to many of the seized pamphlets. This list, together with a book-order form issued from England

and distributed in April 1967, also containing similar references, were presented to the trial court at the time the Decree of Condemnation was under consideration [J.A. 274-6], as evidence of an intent on the part of the Scientological movement to continue to use the literature as part of the same "questionable promotional methods * * * amply disclosed by the evidence." *Research Laboratories, Inc. v. United States*, 167 F.2d 410, 421 (C.A. 9, 1948), cert. den. 335 U.S. 843 (1948).

Appellants' reliance on *United States v. Balanced Foods, Inc.*, 338 F.2d 157 (C.A. 2, 1964) [Brief, p. 43] is misplaced. The Second Circuit has recently explained that its decision in *Balanced Foods* was that it is the function served by the writing which determines whether it is labeling. See *United States v. An Article of Device . . . Diapulse Manufacturing Corporation of America*, 389 F.2d 612 (C.A. 2, 1968), where the Court ruled that reprints of medical articles were labeling because they were distributed by the Claimant. This is synonymous with our position here—that the literature is labeling because used as labeling.

Finally, we have claimants' contention that the literature is not labeling because it does not state the E-meter will diagnose, etc. As previously explained, the over-all aim of the literature is to encourage the individual to be "processed"—with the E-meter—so as to "clear" the individual of all known and unknown physical and mental disabilities and their causes, with the promised result that all existing physical and mental infirmities disappear and no physical and mental disease can occur in the future. The labeling clearly represents that the processing will cure, etc. The E-meter is essential to processing.²⁵ It necessarily follows that the literature which

²⁵ Appellants admit this, for all intents and purposes, with their assertion that the references "to acts of healing" were to "the religious practices of clearing, auditing, and processing" which are "exempt under the Constitution." [Brief, p. 42]. As previously stated in Part II of this Argument, we do not understand that religious practices are *per se* exempt from the requirements of the law.

makes false and misleading claims for processing—with an E-meter—results in the E-meter being misbranded in violation of the Act.

V. Seized Literature May Be Condemned.

There is no merit to appellants' contention that there is no authority to condemn the labeling which serves to misbrand the article. The courts have consistently taken the view that labeling is subject to condemnation. See, e.g., *United States v. Vitasafe Corporation*, 345 F.2d 864 (C.A. 3, 1965), cert. den. 383 U.S. 918 (1965); *United States v. Toddlers Vitamins*, 32 F.R.D. 32 (S.D. Ill., 1963); *United States v. 8 Cartons . . . Molasses*, 97 F. Supp. 313 and 103 F. Supp. 626 (W.D. N.Y., 1951).

In *Vitasafe*, there was seized, condemned, and forfeited approximately 900 packages of vitamin-mineral supplements and 3,730,000 pieces of written, printed and graphic material. On appeal, the Third Circuit held that in the context of that case, it was error to condemn the literature because it had not been introduced into interstate commerce. The lack of interstate shipment was the sole reason. The Court found nothing wrong with condemning literature if the interstate commerce requirements of the Act were met. In fact, the opinion discusses other Supreme Court and Court of Appeals cases in which literature was condemned and distinguishes those opinions solely on the basis of interstate commerce [345 F.2d at 868-9].

Moreover, here, it was the Court's discretion which was called upon. Within the limitation of 21 U.S.C. 334(d), the disposition of condemned goods is discretionary with the Court. *Buticaps, Inc. v. United States*, 102 U.S. App. D.C. 253, 252 F.2d 634 (1958); *United States v. Allan Drug Corporation*, 357 F.2d 713 (C.A. 10, 1966), cert. den. 385 U.S. 899 (1966); *Research Laboratories, Inc. v. United States*, 167 F.2d 410 (C.A. 9, 1948), cert. den. 335 U.S. 843 (1948).

This Court in *Buticaps* said clearly and succinctly [252 F.2d at 626]:

We agree that, as the Government contends, "[b]y violating the law and introducing a misbranded drug into interstate commerce, the owner of the article after there has been a judicial determination that the article violates the law, loses any right to repossess his property" and that "[h]e regains the property upon such terms and conditions as to the trial court seem just and proper, within the confines of the powers conferred by Section 304(d)" of the Act [21 U.S.C.A. § 334(d)]. But the terms and conditions are to be fixed by the court. * * *

The devices and literature were properly seized and were properly adjudicated as misbranded. It was likewise proper for the lower court to condemn the literature and exercising its discretion, order its destruction.

VI. Miscellaneous Trial Matters

A. *Relevant Literature*

Appellants contend that it was error for the trial court to instruct the jury that it could consider any relevant literature to determine the intended use of the E-meter [Brief pp. 45-6]. As we understand their position, literature cannot be relevant if written before the E-meter was made.

However, as we have previously explained, the date literature is written is not determinative of its status—it is the *use* to which it is put. Here, Miss Routsong testified it was currently used [e.g., Tr. 445-6; J.A. 105]. Thus, the jury could have found—as it undoubtedly did—that all the literature was used and was relevant.

B. *Exhibits and Markings.*

Pursuant to the jury's two notes [Tr. 1558-9; J.A. 221], there were delivered to it more than 100 exhibits. At least 100 contained no mark whatsoever; however, for seven of the publications the jury requested no second copy could be located [Tr. 1563; J.A. 224]. As a result, markings left by paper clips that had been inserted in those pam-

phlets during the course of handling over four years remained in the copies sent to the juryroom. No paper clips were in those seven exhibits, only the marks. We submit that it was not erroneous to permit those seven items to go to the jury.²⁶

C. Form of Verdict

Appellants assert that it was prejudicial error for the Court to submit a general form of verdict to the jury because (1) 10 of the 12 members were Government employees and (2) the jury was not called upon to state which particular provision of the Act the E-meter violated [Brief, pp. 46-8].

(1) Governmental employment is not a ban to service as a juror, even though the Government is a party. *Dennis v. United States*, 339 U.S. 182 (1950); *Frazier v. United States*, 335 U.S. 497 (1948). See Title II, D.C. Code, § 2302, 1967 Ed. In this connection, it is difficult to perceive how the Courts here in the District of Columbia could function if Governmental employment were a ban to service as a juror.

(2) 21 U.S.C. 334(a) is specific. It provides that an article of device that is misbranded while in interstate commerce shall be condemned. Since an article can be condemned and forfeited only once, it follows that notwithstanding the libel may contain, as here, allegations of a number of misbrandings, it is not necessary that all be proved to justify condemnation of the E-meter. *United States v. 353 Cases . . . Mountain Valley Mineral Water*, 247 F.2d 473 (C.A. 8, 1957); *United States v. One Device . . . Tox Eliminator*, 160 F.2d 194 (C.A. 10, 1947); *United States v. 62 Packages . . . Marmola Prescription Tablets*, 48 F. Supp. 878 (W.D. Wis., 1943), aff'd. 142 F.2d 107

²⁶ In addition to the 100-plus items specifically requested by the jury [Tr. 1558-9; J.A. 221], the trial judge sent all the exhibits to the jury [Tr. 1567; J.A. 226]. There were clip and other markings on certain of these additional exhibits; again, there were no clips. One hour and 10 minutes later, the jury returned with its verdict. [Tr. 1567-8; J.A. 226-7].

(C.A. 7, 1944), cert. den. sub. nom. *Raladam Co. v. United States*, 323 U.S. 731 (1944).

This being the case, it is immaterial whether the E-meter was misbranded within the meaning of either 21 U.S.C. 352(a) or (f)(1), or both. *United States v. . . . Diapulse Corporation, supra*. There, it was argued that the trial court committed error in accepting a general verdict from a jury which also was given a form listing the 121 diseases for which the device was recommended and was requested to pick out those diseases for which false or misleading claims were made; the jury answered "yes" for 49 of the diseases. In sustaining the general verdict the Second Circuit said:

Appellant argues that a general judgment in an action such as this destroys its meaning, for the very purpose to be accomplished would appear to be adjudication of each of the 121 issues raised. This misconstrues the purpose of the action, which is to protect consumers from misbranded products and condemn the machine (or drug, etc. as the case may be) if it is found to be misbranded. See *Hipolite Egg Co. v. United States*, 220 U.S. 45, 54-55 (1911); and *United States v. Sullivan*, 332 U.S. 689 (1948). 21 U.S.C. § 352 provides in relevant part: "A drug or device shall be deemed to be misbranded—(a) If its labeling is false or misleading *in any particular*." [Emphasis added by Court].

CONCLUSION

On the basis of the foregoing, it is respectfully urged that the judgment and decree of condemnation and destruction be affirmed.

DAVID G. BRESS,
United States Attorney.

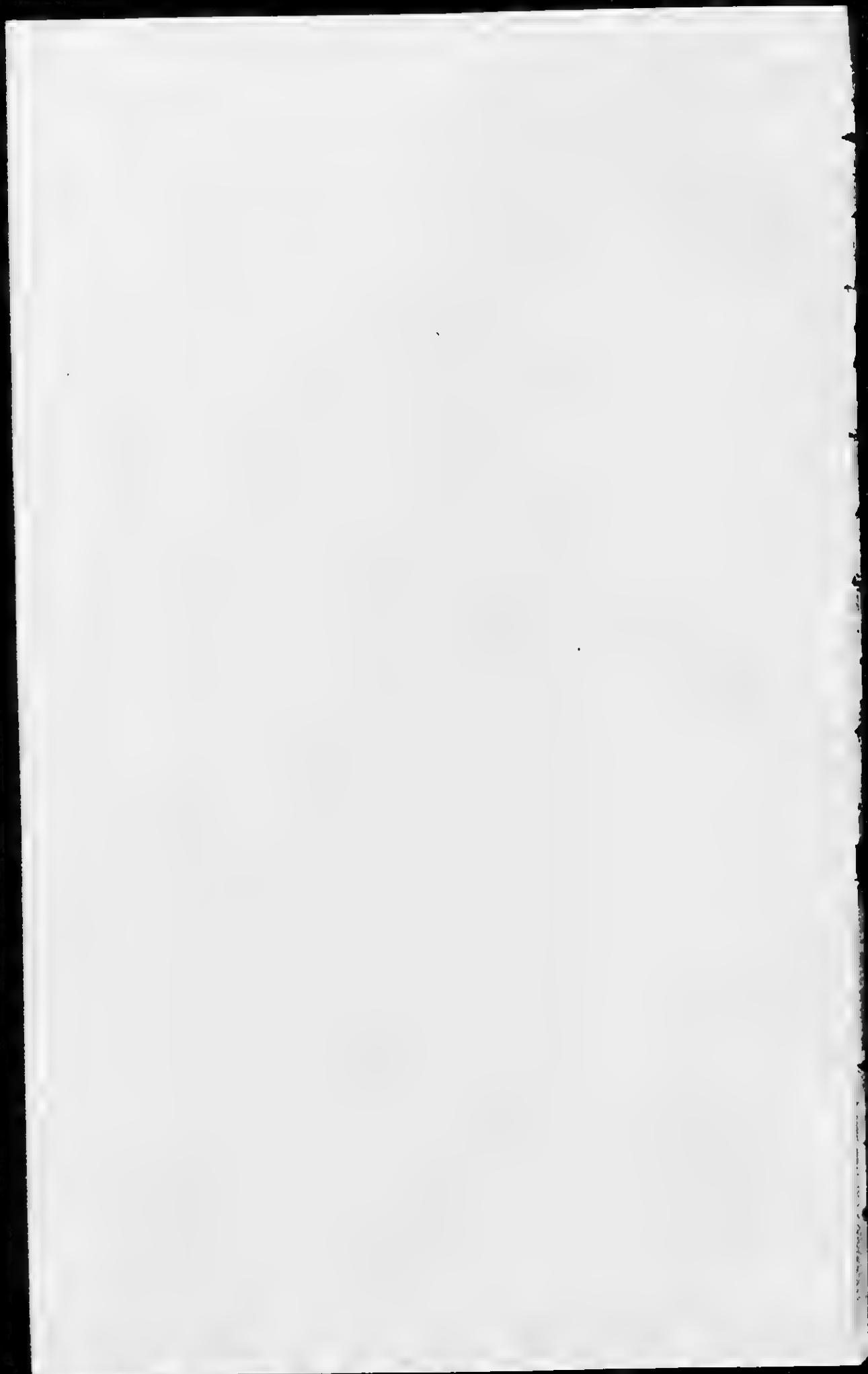
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APPENDIX



APPENDIX

D.D.N.J., F.D.C. 5741-5789

Issued March 1960

U.S. Department of Health, Education, and Welfare
FOOD AND DRUG ADMINISTRATION

NOTICES OF JUDGMENT UNDER THE FEDERAL
FOOD, DRUG, AND COSMETIC ACT

[Given pursuant to section 705 of the Food, Drug, and
Cosmetic Act]

5741-5780

DRUGS AND DEVICES

The cases reported herewith were instituted in the United States district courts by United States attorneys, acting upon reports submitted by the Department of Health, Education, and Welfare. They involve drugs and devices which were adulterated or misbranded within the meaning of the Act when introduced into and while in interstate commerce or while held for sale after shipment in interstate commerce. These cases involve (1) seizure proceedings in which decrees of condemnation were entered after default or consent; (2) criminal proceedings terminated by a plea of guilty or nolo contendere or by a judgment of acquittal after trial; and (3) an injunction proceeding terminated by entry of a permanent injunction. The seizure proceedings are civil actions taken against the goods alleged to be in violation, and the criminal injunction proceedings are against the firms or individuals charged to be responsible for violations.

Published by direction of the Secretary of Health, Education, and Welfare.

GEO P. LARRICK, *Commissioner of Food and Drugs.*
WASHINGTON, D.C., *March 24, 1960.*

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* * * *

NOTICES OF JUDGMENT

5757. Dianezen tablets. (F.D.C. No. 41556. S. No. 3-548 P.)

QUANTITY: 2 drums containing a total of 21,000 tablets in bulk, and 6 btls., each containing 50 tablets which had been repackaged from bulk stock at Washington, D.C., in possession of the Distribution Center, Inc.

SHIPPED: 6-28-57, from Rensselaer, N.Y., by Delmar Pharmacal Corp.

LABEL IN PART: (Drum) "Lot No. 2531 * * * Special Anti-Radiation Compound (Dianezen) Each tablet contains: 6 $\frac{2}{3}$ mg. Vitamin B₁ 100 mg. Nicotinic Acid 100 mg. Ascorbic Acid 6 $\frac{2}{3}$ gr. Dicalcium Phosphate 200 mg. Iron Reduced N.F. 3 $\frac{1}{2}$ mg. Pantothenic Acid. * * *

* For omission of, or unsatisfactory, ingredient statements, see Nos. 5741, 5745, 5761, 5763; failure to bear a label containing an accurate statement of the quantity of the contents, Nos. 5741, 5745; failure to bear a label containing the name and place of business of the manufacturer, packer, or distributor, No. 5745; cosmetics actionable under the drug provisions of the Act, see Nos. 5750, 5770, 5771.

This is a bulk shipment * * * Delmar Pharmacal, Inc., Rensselaer, N.Y.; (btl.) "Dianezen * * * Manufactured for the Distribution Center, Inc., Box 242, Silver Spring, Maryland * * * Each Tablet Contains: Nicotinic Acid 100 mg. Vitamin B₁ 6 $\frac{2}{3}$ mg. Di-Calcium Phosphate 6 $\frac{2}{3}$ gr. Pantothenic Acid 3 $\frac{1}{2}$ mg. Ascorbic Acid 100 mg. Iron 333 mg."

RESULTS OF INVESTIGATION: Examination showed that the article contained 198 milligrams of elemental iron, 4.44 milligrams of vitamin B₁, and 75.5 milligrams of ascorbic acid per tablet.

The article was understood to have been recommended by the consignee for use in preventing and treating harmful effects caused by exposure to radioactivity.

LIBELED: 5-7-58, Dist. Columbia.

CHARGE: 501(c)—the strength of the article, when shipped and while held for sale, differed from that which it purported and was represented to possess since the article contained less than the declared amounts of vitamin B₁, ascorbic acid, and iron; and 502(a)—the statement on the bulk drum label "Special Anti-Radiation Compound" was false and misleading since it represented and suggested that the article was effective for preventing and treating harmful effects caused by exposure to radioactivity, whereas the article was not effective for such purposes, and the statements on the labels of the article with respect to its content of vitamin B₁, ascorbic acid, and iron were false and misleading since the article contained less than the declared amounts of such ingredients.

DISPOSITION: 10-1-58. Default—destruction.

In the
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21,483

FOUNDING CHURCH OF SCIENTOLOGY
OF WASHINGTON, D.C., et al.,
Appellants,

v.

UNITED STATES OF AMERICA,
Appellee.

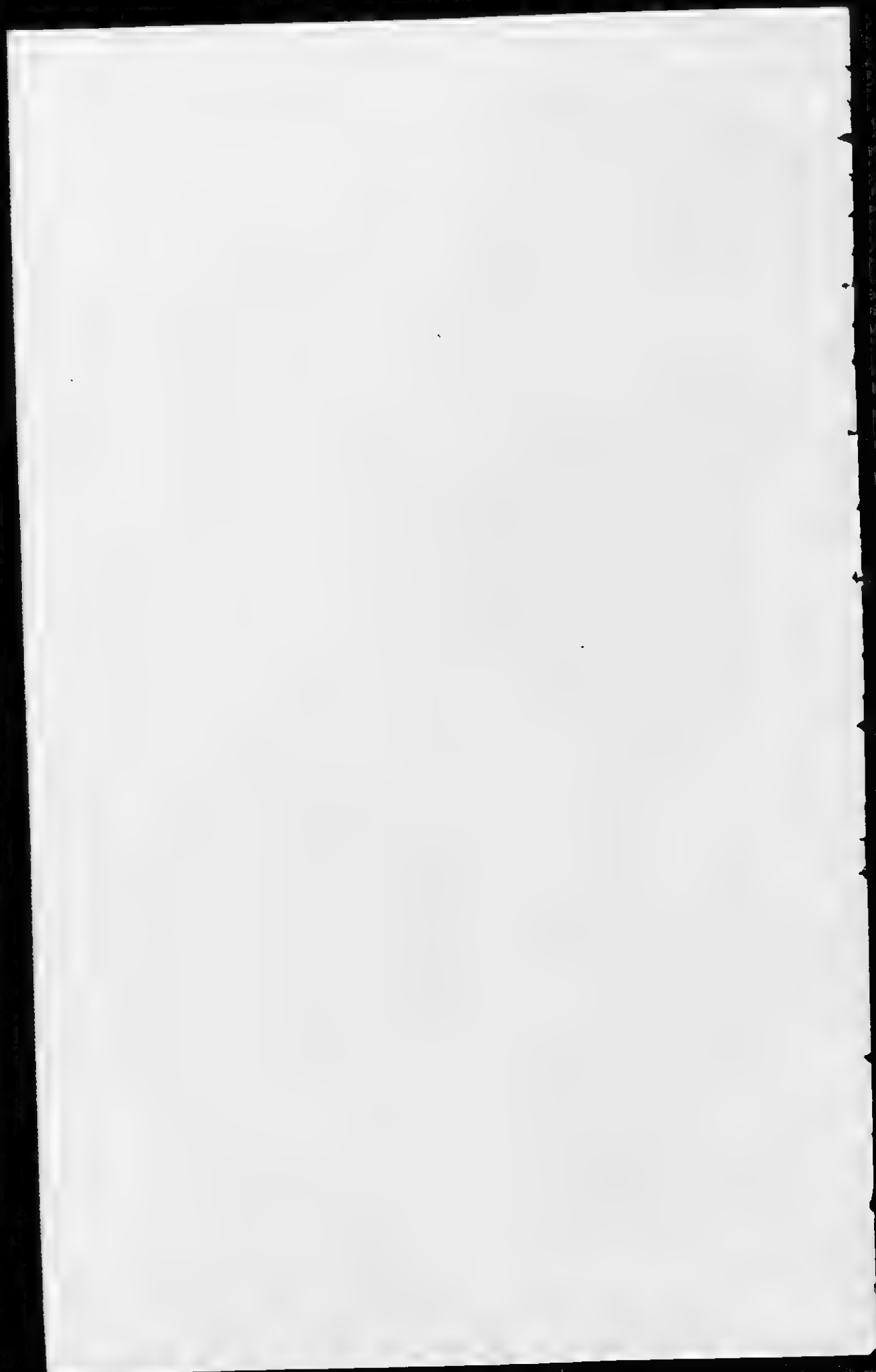
*APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA*

REPLY BRIEF FOR APPELLANTS

United States Court of Appeals for the District of Columbia Circuit
for the District of Columbia
FILED 1 1963
OSCAR H. BRINKMAN
Warner Building
501 - 13th Street, N.W.
Washington, D.C.

Attorney for Appellants

Matthew J. Peterson
CLERK



(i)

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APPEAL FROM THE UNITED STATES
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REPLY BRIEF FOR APPELLANTS

PRELIMINARY ANALYSIS OF
APPELLEE'S BRIEF

As a somewhat needful "clearing of the air" preliminary to specific refutation of the arguments contained in appellee's brief, the appellants point out these *facts* of record:

1. The government produced not a single witness to testify that he or she was told by any of the appellants (or anyone else) that the "E-meter" would diagnose, prevent, or cure disease.

2. The record shows that the appellant Church and its teaching and other affiliates specifically informed, *in writing*, persons who sought counseling on their problems that:

“ * * * The work of the Academy is based upon Scientology * * * a spiritual and religious guide intended to make persons more aware of themselves as spiritual beings, and not treating or diagnosing human ailments of body or mind, and not engaged in the teaching of medical arts or sciences * * * ”
(J.A. 284, 286)

3. Not a single piece of the so-called “labeling,” listed in the appendix to the decree condemning the Church literature, asserts that the E-meter will diagnose, prevent, or cure disease.

All the references to health benefits in the literature are all to the results of the appellant Church’s *religious confessional practice*, known as “processing,” “clearing” or “auditing” of the immortal spirit, in which the meter was used to detect *spiritual and emotional responses*.

The meter, however, as shown by the literature, was only *part* of the means employed for spiritual gains.

4. The Church had the unquestionable legal and Constitutional right to a belief in and the practice of healing by spiritual means.

5. The appellants as ministers, teachers, or other staff of a Church, or as students in the Church school, were engaged in the activities of a religious organization which was committed—as the record and seized literature show—to the spiritual betterment and salvation of mankind. Among the various tenets of its faith was *one*: “We of the Church believe: That the spirit can be saved and That the spirit alone may save or heal the body.” (J.A. 277, 278, 283)

6. There was no refutation by any government witness of the sworn testimony that the meter was used as part of a religious-counseling-and-confessional practice to aid in determining the spiritual state of those who sought the help of the Church.

7. The so-called "labeling" of the alleged device (the E-meter) in reality consists of mere excerpts taken out of context from some of the appellant Church's religious literature, which taken as a whole expounded the purpose and goal of Scientology, viz: The spiritual improvement of mankind together with the improvement of the spiritual ability of individuals to deal with the problems of life.

THE APPELLEE'S "COUNTER STATEMENT"

For reasons perhaps based on the weakness of the government's case, the appellee has chosen not to make direct answers in its brief to the statement of questions presented by the appellants in their brief. Instead the appellee has presented a "Counter-Statement of Questions" that in part avoids or distorts the real and important issues of fact and law which are involved in the case.

The appellee's brief, scholarly as it is, might well be termed "A study in dissimulation." It follows the pattern of the government's initial action in presenting to the District Court Judge, who first acted in the case, a "Libel of Information" and warrant of seizure that carefully avoided disclosure to him of the fact that he was being asked to authorize a raid on a Church and destruction of its religious literature and other property, and the searching by United States Marshals of the persons and residential premises of the Ministers and staff of a Church.

Nowhere in the appellee's counter-statement is there direct acknowledgment of the indubitable fact that a Church was forcefully raided and that its *religious literature* was confiscated with the ultimate government objective of burning or otherwise destroying the books and pamphlets that express the beliefs of the religion.

No Precedent for Government's Action

Not until page 31 of the appellee's brief, after citation of scores of adjudicated cases supposed to justify the government's bizarre and unprecedented raid and seizure, is acknowledgment made that a *District Court* proceeding, "*Butler v. Kavanagh*, (64 F. Supp. 741, E.D. Mich 1945), *is the only case involving a religious freedom question under the Act.*" (emphasis supplied).

That case involved oleomargarine and not destruction of the books and other religious literature of a Church and a ban upon its confessional practices. It was a tax case.

The fact is that the case now presented to this Court is *sui generis*, and a great majority of the 127 decisions cited as precedents upholding the appellee's actions are wholly irrelevant to the situation involved in this cause.

Examples of Distortion

An example of the various distortions of facts in the appellee's brief is found in its *very first paragraph* (G. br., p. 1-2), indeed in the second sentence thereof reading:

"Specifically, the device, which is called a Hubbard Electrometer, was charged to be *and found* misbranded within the meaning of *two* sections of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 352(a), *in that its labeling contained false and misleading representations*, and 21 U.S.C. 352(f)(1), *in that its labeling failed to bear adequate directions for use.*" (emphasis supplied)

The fact of record as pointed out in appellants' brief (p. 46, 47) is that the jury's verdict simply was "Verdict for the government" (J.A. 227) *without specifying whether the finding applied to one or the other or both charges*. This is one of the grounds of appellants' appeal. (Br. 47, 48).

Another distortion of the facts in the case is found on page 16 of appellee's brief, where it is stated:

"The Government violated none of appellants' rights by having a Food & Drug Inspector visit appel-

lants' business premises *as an ordinary citizen*, without informing appellants he was a Food & Drug Inspector, to determine whether any products were being distributed or sold by appellants in violation of the Act."

This is prefaced by the statement in appellee's brief (p. 16): "And the facts establish beyond peradventure *that there was no spy in the Church.*" (emphasis supplied)

Again, in footnote 13 on page 21 of appellees' brief, it is stated: "We categorically deny, as we have in the past, that Mr. Quinn was a 'spy'."

The so-called "ordinary citizen" himself testified (Tr. 1171) that when he first came to the Church (on assignment by the Food & Drug Administration) he represented to the Church's staff as follows: "I said I worked for the Department of Defense and said I lived in Arlington, Virginia." He admitted when testifying, that actually he lived in Falls Church, Virginia. He enrolled (at government expense) for a course in Scientology. He turned over to his superiors at the Food & Drug Administration some of the Church literature. He made secret daily reports to the Food & Drug Administration during his attendance at the Academy of Scientology (the Church school); and he had some notebooks which he later turned over to the United States Attorney "in preparation for the trial." (Tr. 1190-1191).¹

If this pseudo "ordinary citizen" employed by the Food & Drug Administration to infiltrate the Church was not a

¹For a great mass of sworn testimony as to the methods and character of the Food & Drug Administration's investigators and inspectors involved in *other* cases of enforcement of the Act, see Part 2, Hearings before the Subcommittee on Administrative Practice and Procedure of the Committee on the Judiciary of the United States Senate, 89th Congress, First session, pursuant to S. Res. 39, April 13, 27, 28, 29; May 5, 6; and June 7, 1965.

spy for the government agency—as twice asserted in the appellee's brief (p. 16, 21)—what was he?

Fallacies of Appellee's Case

The attempted justifications in the appellee's brief, for the government's search, seizure, and condemnation of property are based upon these *legal fallacies*, among others:

1. That the appellant Church's practice of spiritual healing was not exempted by the First Amendment to the Constitution from government interference.

2. That the search and seizure in this case was an ordinary civil action, not subject to the limitations and prohibitions of the Fourth Amendment to the Constitution.

3. That the appellants made representations that the so-called device (the E-meter) could diagnose or cure diseases.

4. That it was unlawfully misleading for the appellant Church's religious literature to narrate instances of healing accomplished by spiritual means.

5. That the United States government has the right, notwithstanding the First, Fourth, and Fifth Amendments to the Constitution, to seize and destroy the religious literature of a Church.

6. That the Church's confessional practices, in which the E-meter was sometimes used, were not for the betterment of the spirit of those who sought counseling on the problems of their lives, but involved use of the E-meter merely to diagnose or cure diseases.

All these assumptions, which permeate the appellee's brief, are incorrect or false, and not supported by substantial evidence in the record, or by the laws and Constitution of the United States, as interpreted by the Supreme Court.

Appellants discuss the fallacies and the other errors of fact and law apparent in appellee's brief in the following-numbered paragraphs which correspond with the numbering of sections of appellee's brief.

ARGUMENT

I

THIS CASE DOES NOT INVOLVE A
MERE CIVIL ACTION IN REM

The Food & Drug Act sought to be enforced by appellee through what is termed "civil action," in the Counter-Statement of Questions presented by government counsel, is, in reality a *penal statute* that authorizes either criminal charges, injunctive action, or confiscation and forfeitures of property of private citizens.

The Act provides in Section 333 for penalties ranging up to imprisonment for not more than three years, or fines of not more than \$10,000, or both such imprisonment and fine. The records of federal courts throughout the country are filled with convictions in criminal cases brought under the Act at the instigation of the Food & Drug Administration.

The search and seizure in this case was quite evidently for the purpose of acquiring evidence that *might* later be used to convict the appellants in a subsequent criminal action. Previously, by stealth and deception, a spy was implanted in the Church and its religious school and among the other appellants.

It is fair to assume that the search-and-seizure raid was the eventual "fruit of the poisonous tree." Appellants are convinced that this assumption is warranted by the appellee's successful opposition during the trial to the production of the government spy's reports, for examination by appellants' trial counsel. (Previously, also, in pre-trial discovery proceedings of record, there was refusal by the government to permit examination of investigative reports.)

There can be no doubt that under the prevailing decisions of the United States Supreme Court cited in appellants' original brief in this case (p. 20, 21, *et seq.*, including "*One Plymouth Sedan*," *Boyd*, *Gouled*, and others, the search and seizure in the present case were violative of the Fourth Amendment, and therefore illegal.

Use of Stealth and Coercion

The opinion in *Gouled*, (255 U.S. 298, at 303, *et seq.*) states with clarity and force "the law of the land" applicable to the case now before this Court:

"It would not be possible to add to the emphasis which the framers of our Constitution and this Court (in *Boyd v. United States*, 116 U.S. 616; in *Weeks v. United States*, 232 U.S. 383; and in *Silverthorne Lumber Co. v. United States*, 251 U.S. 385), have declared the importance to political liberty and the welfare of our country of the due observance of the rights guaranteed under the Constitution by these two amendments (Fourth and Fifth).

* * *

*"It has been repeatedly decided that these amendments should receive a liberal construction, so as to prevent stealthy encroachment upon or 'gradual depreciation' of the rights secured by them, by imperceptible practice of Courts or by well-intentioned but mistakenly over-zealous executive officers. In the spirit of these decisions, we must deal with the questions before us. * * * * (emphasis supplied)*

"The prohibition of the Fourth Amendment is against *all unreasonable searches and seizures*, and if for a government officer to obtain entrance to a man's house or office by force or by an illegal threat or show of force, amounting to coercion, and then to search for and seize his private papers would be an unreasonable and therefore a prohibited search and seizure, as it certainly would be, *it is impossible to successfully contend that a like search and seizure would be a reasonable one if only admission were obtained by stealth instead of by force or by coercion.*" (emphasis supplied)

The stealth in this case was the infiltration of the Church by a Food & Drug Administration spy, and the use of a "mail cover" (through the Post Office Department) to secretly report on mailings by a Church affiliate.

The coercion used to obtain what might be evidence of the violation of a penal statute was the so-called "official inspection" of the Church by Food & Drug agents, and their questioning of the staff without warning that they or the Church might be charged with a crime and their statements used against them.

The stealth was compounded by concealment from the District Judge to whom the libel of information was presented for issuance of a warrant that a Church and its religious literature were to be searched and seized. The record is barren of any showing of probable and reasonable cause to the Judge.

To this state of *facts* the June 5, 1967 decision of the United States Supreme Court in *Camara v. Municipal Court* (387 U.S. 523), is fully pertinent as appears from the following excerpts from the opinion of Mr. Justice White: (emphasis supplied)

"Though there has been general agreement as to the fundamental purpose of the Fourth Amendment, translation of the abstract prohibition against 'unreasonable searches and seizures' into workable guidelines for the decision of particular cases is a difficult task which has for many years divided the members of this Court. Nevertheless, *one governing principle*, justified by history and by current experience, has consistently been followed: except in certain carefully defined classes of cases, a search of private property without proper consent is 'unreasonable' unless it has been authorized by a *valid* search warrant. See, e.g., *Stoner v. California*, 376 U.S. 483; *United States v. Jeffers*, 342 U.S. 48; *McDonald v. United States*, 335 U.S. 451; *Agnello v. United States*, 269 U.S. 20. As the Court explained in *Johnson v. United States*, 333 U.S. 10, 14:

'The right of officers to thrust themselves into a home is also a grave concern, not only to the individual but to a society which chooses to dwell in reasonable security and freedom from surveillance.

When the right of privacy must reasonably yield to the right of search is, as a rule, to be decided by a judicial officer, not by a policeman or government enforcement agent.'"

In this case, it appears from the record, the judicial officer was not made aware that a Church was to be raided and its religious literature seized, nor was he presented with any supporting affidavits or other evidence of reasonable and probable cause for issuance of the warrant.

Yet in 49 pages of artistic or artful legal prose, the appellee's brief carefully refrains from stating unequivocally *WHY* the name of the Church, and the fact that a Church's literature and other property were to be seized, were omitted from the libel and warrant presented to the Judge.

Religions Do Have Constitutional Protection

The cases cited by appellee, in support of its contention that the search and seizure in this case were just a part of a civil action *in rem*, involve the confiscation of such mundane property as jam, peanut butter, frozen eggs, honey and vinegar, molasses, etc. The appellee concedes (*supra*) that there is *no precedent* for the search-and-seizure of a Church and its religious school for articles and literature used in the rites and practices of a religion.

But the appellee fails to concede that the United States Constitution gives *special protection* against government interference with religious beliefs and practices and "raises a wall of separation between Church and State" as the Courts have ruled.

But the fact is that the First Amendment gives a very special protection against government interference with religions and "the free exercise thereof."

In *Berkowitz v. United States*, 340 F.2d 168, (1st Cir. 1965), merely cited in our previous brief, the facts involved a libel action filed by the United States for the forfeiture of property that the government contended was intended for use in violation of the Internal Revenue laws. The Court

found that the money was seized from appellant in violation of his Constitutional rights under the Fourth Amendment and held that the money must be returned.

The Court stated, *inter alia* (at page 171):

“* * * What the government is seeking in the case at bar is to put its interest in forfeiting some money which was used to commit a crime ahead of the public’s interest in keeping actions of government agents within Constitutional boundaries. Our choice between these interests must favor the interest of Constitutionality unless we are to betray our historic commitments and our living faith.”

In *Nathanson v. United States*, 290 U.S. 290, 1.c.47, the Court said in reference to the Fourth Amendment:

“*The amendment applies to warrants under any statute, revenue, tariff, and all others. No warrant inhibited by it can be made effective by an Act of Congress or otherwise.*” (emphasis supplied)

See also *Grau v. United States*, 287 U.S. 124; and *Sgro v. United States*, 287 U.S. 206.

Having utterly failed to comply with the Constitutional requirements for the issuance of a *valid* search warrant—and indeed having acquired one lacking the verification required by the Fourth Amendment, by concealment from a respected District Judge of important facts necessary to the proper exercise of his judgment and discretion—it follows that the search and seizure were void *ab initio*, and the seized so-called “evidence” should have been suppressed.

It is respectfully suggested that to approve the course followed by appellee in obtaining the warrant that was issued would tend to sanction additional deceptions in the future of Judges of the District Court.

Congress Cannot “Cancel” the Constitution

Appellants contend that neither under the Admiralty rules nor under any statute enacted by Congress can the requirements of the Fourth Amendment be cast aside or nullified.

Nathanson v. United States, supra. Here, in a quasi-criminal action it would be flouting the Constitution to assume that the government can make a search and seizure upon a warrant issued without a showing of probable cause, not supported by oath or affirmation, and "not *particularly* describing the place to be searched" (here a Church and its religious school), and the persons or things to be seized (here the religious literature of a Church). *There is absolutely no such precedent for such action.*

It is a far different thing to seize or detain a ship for non-payment of repair charges or sailors' wages, under Admiralty rules, than it is to raid a Church, confiscate its religious literature, and assault its Ministers and communicants under the pretense of enforcing the Food & Drug Act.

And if it is necessary, as the appellee contended, that those who own the seized property shall file claims verified by affidavits, *is it any less necessary that the government verify its allegations before searching a Church and seizing its religious literature and equipment?*

As a matter of fact, the Supreme Court of the United States in the past provided in Rule 22 of the Admiralty Rules which it promulgated that "all libels in instance causes, civil or maritime, shall be on oath or solemn affirmation." This superseded former Rule 23 which contained no clause requiring oath or affirmation.

Summed up, this case does not involve a simple "civil action in rem," as contended by appellee in Part I of its argument (G. br. 17).

It is instead, under the prevailing and well-reasoned decisions of the Supreme Court of the United States, a quasi-criminal case involving seizure and forfeiture of property under a penal statute. Therefore, the entire proceeding was invalid and unlawful because of violation of the Fourth Amendment to the Constitution as well as violations of the First and Fifth Amendments.

The record, taken as a whole, amply substantiates the appellants' contention that the case constitutes a shameful persecution and not a mere "civil action in rem."

II

THE APPELLANTS SEEK NO "EXCUSE" FROM COMPLIANCE WITH ANY LAW ON RELIGIOUS GROUNDS

The second point of appellee's argument (G. br. 28) is that: "The E-meter is not 'excused' from compliance with the Federal Food, Drug & Cosmetic Act because appellants are a religious organization and its members."

By this assertion the appellee merely sets up a straw man to knock down.

The appellants have never claimed exemption from *any* law—much less those legally applicable to religions, churches, or their communicants, clergy, or other personnel.

What the appellants really assert is that the Constitution and laws of the United States, including the District of Columbia Code, 1967, Title 2, Sec. 134(d) authorize them, *and guarantee their rights* to freedom of religious belief and its exercise; freedom of speech; and freedom of the press.

And the appellants further contend that *like all citizens* they are entitled under the Constitution and laws to protection against unreasonable searches and seizures which violate "the right of the people to be secure in their persons, houses, papers and effect."

What the appellants have asserted in this cause are their rights: (1) *to belief in spiritual healing of human ailments* as an exercise or enjoyment of religious freedom; and (2) the right to "the free exercise" of their religion without harm to others.

The appellee's argument and the numerous so-called precedents cited are in the nature of "love's labor lost," for they have no applicability to the facts in this case, as witnessed by the government brief's admission (p. 31): that

"*Butler v. Kavanagh*, 64 F. Supp. 741, (E.D. Mich. 1945) is the only case involving a religious-freedom question under the [Food & Drug] Act."

The appellee's argument is based upon the false premise that the E-meter was used by the appellants to diagnose and treat disease.

In his examination of a total of 25,000 to 27,000 pages of Scientology literature, a government witness (Will N. Swain of the Food & Drug Administration) was unable to find a single statement by the Church or its affiliates that the E-meter could diagnose or cure disease. The passages from the Church literature which he read to the jury, and which the appellee relied on to prove that the E-meter was a device subject to the Food & Drug Act (G. br. 14), referred to instances of *spiritual healing* achieved through the confessional and other religious counseling practices of Scientology.

Throughout the trial, and in its brief, the government has sought to create the belief that the spiritual auditing and processing practices of the Church were synonymous with "E-meter" and consisted of nothing else than the use of the meter.

The fact is that the Church and the other appellants have never at any time claimed that the meter would diagnose or cure anyone of any disease or ailment.

On pages 12 and 13 of its brief the appellee lists various ailments and diseases that a Scientology Minister, Miss Routsong, referred to as being benefitted or cured by Scientology's spiritual-counseling practice of auditing or processing. Then the brief states (p. 13): "And all of this is done with an E-meter."

A reading of Miss Routsong's testimony discloses that she denied not once, but many times, that the E-meter was used to or would diagnose or cure disease. The Court is referred to excerpts from Miss Routsong's testimony (as a government-called witness) appearing on pages 32 to 35, inclusive,

of appellants' brief. Summarized, the meter is used as a confessional aid and indicates to the Minister or Auditor, in responses to questioning, the "areas where there is a spiritual emotional reaction." To the Auditor or Minister, such a reaction means that "as the spirit there is something on the subject being discussed to which * * * (the preclear or person who has sought counseling) is reacting."

The meter, it is clear from the testimony and the Church literature, was used as a spiritual guide, and NOT as an instrument for the cure or diagnosis of disease.

And the testimony of the appellee's own medical and other scientific witnesses verified the fact that the meter or similar instruments would or could register purely emotional reactions.

Congress, in its wisdom, has not yet seen fit to endow the Food & Drug Administration with control over people's spiritual or emotional problems.

The government has no more right to prohibit the use of the meter as a guide to the spirit than it would have to ban or regulate the use or content of Holy water, or of Communion wine or bread, or baptismal immersion, or the religious rite of circumcision.

The appellant Church has sought no "excuse from compliance with law," as contended by the appellee. There simply is no law that prohibits anyone, Church or layman, from fashioning or using an instrument to detect or indicate emotional and spiritual responses for the purpose of spiritual counseling and spiritual healing.²

²Widely used by government agencies and law enforcement officials are instruments known as "polygraphs" or "Lie detectors," which, somewhat like the E-meter, indicate emotional responses to questioning. (See Tenth and Thirty-ninth Reports by the Committee on Government Operations, 89th Congress, House Reports Nos. 198 and 2081.) The Department of Health, Education & Welfare, of which the Food & Drug Administration is a part, has used such instruments for research.

Spiritual healing has been a function of many religions in many parts of the world for many centuries, and the Bible as well as much religious literature of many sects attests its miracles.

The record clearly demonstrates that the appellant Church has not held itself out as offering to diagnose or cure ailments, but has reported in its literature that improvements of physical ailments were observed as a by-product of spiritual processing or auditing.

Healing by spiritual or religious means is an acceptable component of religious belief, and acceptable as a tenet of a tax-exempt religious organization. *Unity School of Christianity*, 4 BTA at 62, 66, 70; *A.A. Allen Revivals, Inc.*, 22 CCH Tax Ct. Mem. at 1435, 1444.

In *Allen*, the Court said:

“Reliance upon divine healing is a basic tenet of several religious organizations, among which are the Church of Christ Scientist and the Pentecostal Church of God. These religious groups subscribe to the Biblical promise of ‘miraculous healing.’”

The appellants simply had no reason to “seek an excuse from compliance with the law, on religious grounds,” because their spiritual practices constituted no violation of *any* law.

III and IV

THE E-METER IS NOT A DEVICE SUBJECT TO THE FOOD & DRUG ACT AND THE CHURCH LITERATURE IS NOT “LABELING”

Unable to produce at the trial (1) a single witness to testify that he or she had been told by the appellants, orally or in writing, that the E-meter would cure or diagnose disease—and (2) unable also to produce a single piece of Church literature making such a statement—the government lacked any real proof that the E-meter was a device subject to the Food & Drug Act.

There was also lacking any proof whatever that any person had been the victim of "false and misleading statements" which the libel of information alleged were embodied in "labeling" of the meter.

It is not necessary to deal at length with the portions of appellee's brief alleging that the Church literature constituted "labeling" which established the meter as a device for use in the cure, diagnosis, or treatment of disease.

It has already been shown in this and appellants' original brief, and in the testimony in the case, that *all* the references in *all* the literature were to the religious practices of freeing or enhancing or aiding the ability of the divine Spirit with which mankind has been endowed, to function for human betterment. These practices were generally referred to as "processing," "auditing," or "clearing" people spiritually.

But, as previously pointed out herein, the appellee—for the purpose of propping up a case brought under the Food & Drug Act—has attempted to make the above quoted words exactly synonymous with "E-meter." Thereby the E-meter would become a device subject to the Food & Drug Act.

But the evidence is overwhelming that the meter was simply an instrumentality to serve as a guide to the emotions and the Spirit.

That being true—and all the Church's religious literature being devoted primarily and basically to the nature and workings of the human spirit—the *function* of both the meter and the literature was that of spiritual improvement.

The reasonable and just interpretation of the word "labeling" as used in the Food & Drug Act was enunciated by the Second United States Circuit Court of Appeals in *United States v. 24 Bottles of Sterling Vinegar & Honey*, 338 F.2d 157 (1964), in these words (l.c.158):

"* * * Labeling does not include every writing which bears some relation to the product. There is a line to be drawn, and, if the statutory purpose is

Spiritual healing has been a function of many religions in many parts of the world for many centuries, and the Bible as well as much religious literature of many sects attests its miracles.

The record clearly demonstrates that the appellant Church has not held itself out as offering to diagnose or cure ailments, but has reported in its literature that improvements of physical ailments were observed as a by-product of spiritual processing or auditing.

Healing by spiritual or religious means is an acceptable component of religious belief, and acceptable as a tenet of a tax-exempt religious organization. *Unity School of Christianity*, 4 BTA at 62, 66, 70; *A.A. Allen Revivals, Inc.*, 22 CCH Tax Ct. Mem. at 1435, 1444.

In *Allen*, the Court said:

“Reliance upon divine healing is a basic tenet of several religious organizations, among which are the Church of Christ Scientist and the Pentecostal Church of God. These religious groups subscribe to the Biblical promise of ‘miraculous healing.’”

The appellants simply had no reason to “seek an excuse from compliance with the law, on religious grounds,” because their spiritual practices constituted no violation of *any* law.

III and IV

THE E-METER IS NOT A DEVICE SUBJECT TO THE FOOD & DRUG ACT AND THE CHURCH LITERATURE IS NOT “LABELING”

Unable to produce at the trial (1) a single witness to testify that he or she had been told by the appellants, orally or in writing, that the E-meter would cure or diagnose disease—and (2) unable also to produce a single piece of Church literature making such a statement—the government lacked any real proof that the E-meter was a device subject to the Food & Drug Act.

There was also lacking any proof whatever that any person had been the victim of "false and misleading statements" which the libel of information alleged were embodied in "labeling" of the meter.

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" * * * Labeling does not include every writing which bears some relation to the product. There is a line to be drawn, and, if the statutory purpose is

to be served, it must be drawn in terms of the *function* served by the writing. This is the teaching of *Kordel v. United States*, 335 U.S. 345, 69 S.Ct. 106 (1948)." (emphasis supplied)

It should be borne in mind, as pointed out in appellants' original brief herein (p. 43) that much of the Church literature relied upon by the appellee as "labeling"—and listed in the appendix to the decree—made no direct or indirect reference to the meter or had been published *prior* to invention or use of the meter.

What the "Labeling" Really Is

To establish "labeling" which would make the meter a "device," the appellee has quoted out of context in its brief and in the appendix to the decree, (which it prepared for adoption by the Court), excerpts from literature seized in the raid upon the appellant Church. Yet, as a Scientology Minister, Miss Routsong testified at the trial (when called as a witness by appellant) much of this literature, introduced as government exhibits, was merely of historical interest, tracing the evolution of Scientology as a religion, and not used in the work of the Church. (J.A. 97, 99, 101, 102, 104, 105, 106)

The mind-oriented philosophy of "Dianetics," by process of evolution, became the religious faith of Scientology with the establishment of the appellant Church in Washington, D.C. in 1955.

To consider all the early writings on Dianetics, as embodied in the mass of so-called "labeling" offered by the appellee as proof of the use of a "device," would be as misleading as to "tag" use now of the Old Testament as upholding polygamy or incest; or some of the early literature of Christianity as justifying the execution of witches or the burning at the stake of heretics. In the same way, the practice of medicine now might be linked with long-ago medical literature prescribing drastic bleeding of patients to cure their ills, etc.

Religious Literature Not "Labeling"

The function of the E-meter was not to cure, treat or diagnose disease, as erroneously claimed by appellee to support its contention that the instrument was a "device" under the law. Its actual function was to explore and uncover the psyche or human soul or Spirit and the hidden recesses wherein lie the emotions that affect human conduct. This is the religious message and lesson taught by the seized Scientology literature, as will be evident upon detailed examination of the books, pamphlets, etc.

For instance, the following excerpts from testimony of Dr. Leon Yochelson, a psychiatrist used as a witness by the appellee (Tr. 1022, *et seq.*) in reality tend to support the previously described purpose of the E-meter:

(Tr. 1024) "Q. Doctor Yochelson, are there diseases which are caused by emotional or psychological factors? A. Yes, sir, there are.

"Q. And what are examples of such diseases? A. Certain of the neuroses, for example, hysteria, anxiety reactions, reactive depressions, can be due to emotional conflicts. * * * (J.A. 173)

(J.A. 176, Tr. 1029) "Q. In the case of what you described as neuroses, is talking to the patient sometimes involved in the treatment? A. If I may say that talking with the patient, certain discussions may frankly be present, yes, sir. * * * (Tr. 1030, J.A. 177) The purpose of this is to give the physician an idea as to the strength of personality or as it is technically known, ego strength, that the individual has. In other words, it must be determined to what extent the individual can withstand certain stresses and strains."

Much more of the testimony of the various medical experts might be quoted to the same effect if space permitted, including the emotional or psychic causation of ulcers, etc., and the need to "talk" with persons having difficulties in solving the problems of life. It is sufficient, perhaps, to

justify the use of the E-meter for purely spiritual purposes, in "auditing," to quote the following additional testimony (on cross examination) of Dr. Yochelson, the government's witness:

"Q. (Tr. 1071) Doctor, being a psychiatrist, you deal with the mind and the total man, you testified to that. Does man have a Spirit in your opinion?

A. In the religious sense. Are you asking my personal opinion? Q. As a doctor. A. As a doctor, I don't have an opinion on that. As a person, as an individual citizen, I say yes. In a religious sense there is a Spirit.

"Q. Well, when you are treating your patients, do you ignore the possibility that man has a spirit? A. If there are problems of a spiritual kind, I send the person to a Clergyman.

"Q. Well, what would some of those be?

"A. There have been instances where an individual has come with anxieties which were traceable to questions of morality in certain behavior where the individual was not neurotically inclined to feel guilty. That is to say it was not an unreasonable feeling of guilt, but that individual needed more of a theological guidance than a medical guidance. * * *

"Q. (Tr. 1072) So you don't purport to treat the soul or the spirit? And, if you can identify something that is a problem of the soul or Spirit you send it off to a Minister, is that right?

"A. Yes, sir.

"Q. Now, Doctor, would you define the subconscious for us, please? (Tr. 1073) A. The subconscious is that aspect of mental function which is not within the person's awareness at the moment but which can be recalled by encouragement, by association, in his stream of thoughts.

"Q. Is it in any way similar to a storehouse of memory? A. In a sense, but in the defined sense of of being a recallable area of memory. * * * *

"Q. Now, isn't it true, Doctor, that many reputable psychiatrists today, in fact some eminent ones, feel very strongly that an address to God is a very important factor in emotional well being today?

"A. Yes, some do. Of course.

"Q. And that some of them feel that without that or (Tr. 1074) without an address to some higher belief that it is impossible to have real emotional health?

"A. Some people do believe that, yes, sir."

All this, and much more in the record, confirms the validity of the use of the E-meter in the confessional practice of the religion of Scientology, for the purpose of reaching the Spirit of those who came to the appellant Church for counseling on the problems of life.

It cannot be too strongly stressed that the evidence, including Church literature, clearly demonstrates the E-meter was NOT a medical device but a spiritual aid, guide, and "assist."

V

ILLEGAL CONDEMNATION OF SEIZED CHURCH LITERATURE

The contention on the part of the appellee that the seized Church religious literature "may be condemned" is perhaps the weakest part of a very weak case.

The case involves the enforcement of a penal statute, by way of a forfeiture of property, and the alleged commission of crimes by the appellants. It is not necessary to cite to this Court, with its legally-experienced and erudite members, the numerous decisions of the highest Courts to the effect that such a statute must be strictly construed. As pointed out in appellants' brief, there is *nothing whatever* in the Food & Drug Act that authorizes the condemnation or destruction of labels or labeling.

The *Vitasafe* case, 345 F.2d 864 (1965), cited by the appellee to uphold its contention, was admittedly reversed

on appeal because of lack of interstate shipment of the *printed material*. In the present case, the meters and the literature were "at rest" until moved by the United States Marshals. There was no evidence whatever that the meters and literature ever accompanied each other in any interstate shipments—none, at all, being proved as having been made—to satisfy the Act's definition of "*accompanying* labeling." Moreover, the second charge of the libel of information under Sec. 532(f)(1) "in that the labeling fails to bear adequate directions for use of the article" tends to negative the contention that the literature was actually labeling.

None of the other cases cited by appellee in support of its contention involved the confiscation and destruction of the religious books and other literature of a Church.

But the great vice of the government's contention that the literature can legally be destroyed is appellee's total disregard of the fundamental law of the land, the words of the First Amendment to the Constitution: "Congress shall make no law * * * abridging the freedom of speech or of the press."

A further potent reason for rejecting the appellee's contention for destruction of the Church literature is stated under the next section of this brief.

VI

TRIAL COURT ERRORS

Taking up first Section C of appellee's contention in its brief (P. 47-48) that the form of verdict required by the Court—"For the government" or "For the claimants"—was not prejudicial to the appellants herein, the appellee states (p. 48):

"* * * It is immaterial whether the E-meter was misbranded within the meaning of either 21 U.S.C. 352(a) or (f)(1), or both."

Nothing could be more contrary to the facts.

If, as the appellee has contended elsewhere in its brief, the jury found the meters to be falsely and misleadingly labeled, under Sec. 352(a), then both the meters and the literature could be condemned and destroyed. Or, so says the appellee.

But, as may be the case, if the jury did *not* so find—and the verdict is *absent* a specific finding on § 352(a)—then its verdict “For the government” would apply *only* to § 352(f)(1), viz: that the labeling failed to contain adequate directions for use of the meter.

If that was the jury’s finding—and there is nothing in the form of verdict to indicate otherwise—then there would be no real justification for destruction *either* of the meters or of the Church literature as false and misleading. The Act permits correction or re-labeling under Sec. 334(d).

The claimants had specifically requested the trial Court to submit to the jury a proper form of verdict. This the Court failed to do.

As to Section A of Part VI of appellee’s brief dealing with the relevancy of Church literature published long before the meter came into use, the statement is made that introduction of such evidence was justified because “Miss Routsong testified it was currently used.” The fact is that Miss Routsong testified that much of the literature was used only for historical purposes in connection with the development of the religion of Scientology. (J.A. 97, 99, 101, 102, 104, 105, 106)

As to Section B of appellee’s brief (p. 46-47), which defends markings by the government of parts of Church literature given to the jury as exhibits, it is sufficient to point out that the excerpts selected for the jury’s consideration were thus taken out of context. The jury, in the time it took to reach a verdict, could not have read the exhibits as a whole, containing many hundreds of pages, to arrive at a fair understanding of the books or pamphlets. This was prejudicial to the appellants and gave an unfair advantage to appellee.

Appellee's Evasion of Vital Issue

The Court's special attention is directed to the important fact that the appellee in its brief has entirely ignored and failed to deny the appellants' charge of *serious trial error* involving the appellee's prejudicial and unlawful examination of a witness called by the government, Miss Marilynn Routsong, a Minister of Scientology.

The record shows, in numerous portions of the testimony printed in the Joint Appendix, what the appellants in their brief (p. 48) charged as prejudicial trial error, to wit: The interrogation of Miss Routsong about her personal religious beliefs, her faith in the miraculous results of her religion, the salaries or other compensation of other Ministers of the appellant Church, what was done with the income of the Church and its affiliated religious organizations; the methods of interesting more people in the religion, the names of persons who had participated in the religious confessionals, and the requested divulgement of information given in the course of religious counseling.

All this was entirely irrelevant, especially as the appellee had not in pleadings or other proceedings contested the validity of the Church as a religious organization.

Over the oft-repeated objections of appellants' counsel—which to all practical effect were ignored or disregarded by the Trial Judge—the questioning of Miss Routsong by one of appellee's trial attorneys (the Chief of the Civil Division of the United States Attorney's office) was carried on (through the reading of her deposition) in a way practically certain to prejudice the jury against the witness, her Church, and her religion.

Prejudicial Questioning by Appellee

The jury was allowed to hear Miss Routsong's *refusal* to give privileged information obtained in the course of confessionals and religious counseling. A Judge of the District Court (Judge Jones) had previously, in pre-trial discovery

proceedings, ruled against such violation of the Constitutional right to freedom of religion. The privilege is validated in Sec. 309 of Title 14, D.C. Code.

And *this* Court, in strongly-worded, well reasoned, and unequivocal opinions by Judge Fahy and Judge Edgerton has upheld the sanctity and privilege attaching to religious communications of a confessional nature. *Mullen v. United* 105 U.S. Appls., D.C. Repts. 25-27.

Through appellee's often entirely irrelevant interrogation of Miss Routsong, as stated in appellants' original brief:

"They (the jurors) were exposed—prejudicially to the claimants—to religious beliefs much different than those professed or expounded by other Churches, and to recital by Miss Routsong of what may have been instances of miraculous healing not among those related in Christian Bibles."

Such government interference with the exercise of religious beliefs has been strongly condemned by the United States Supreme Court in numerous decisions previously cited, and notably in *United States v. Ballard*, 322 U.S. 78.

The appellee, by its failure to discuss in its brief this phase of the case has, in effect, admitted error seriously prejudicial to the appellants in the trial of the case.

CONCLUSION

For the above and other reasons stated in appellants' briefs, the verdict, judgment, and decree of the District Court should be set aside, and the libel action dismissed, all as heretofore prayed.

Respectfully submitted,

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21483

THE FOUNDING CHURCH OF SCIENTOLOGY OF WASHINGTON,
D.C., ET AL., APPELLANTS

v.

UNITED STATES OF AMERICA, APPELLEE

PETITION FOR REHEARING AND SUGGESTION FOR
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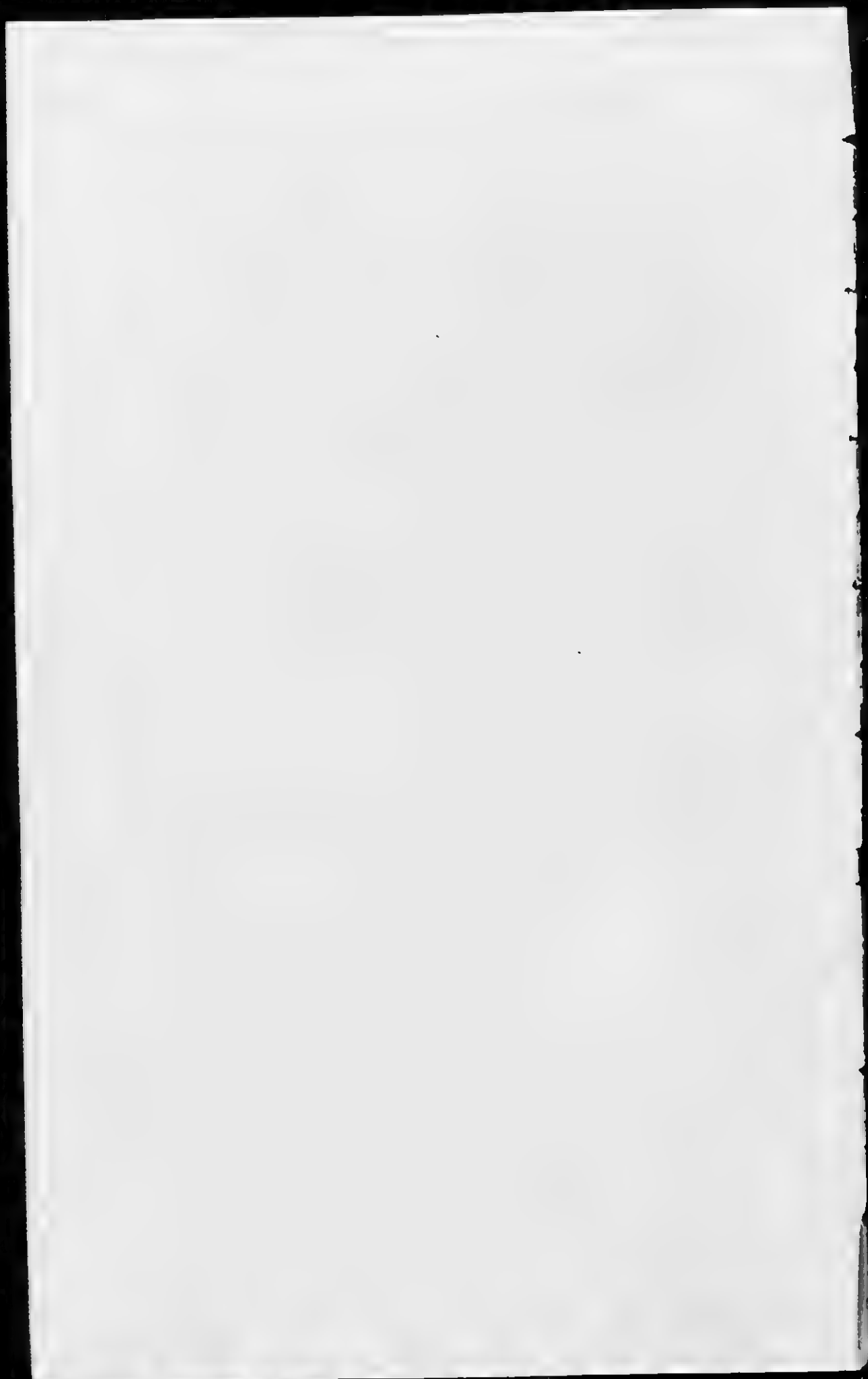
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FILED MAR 14 1969

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INTRODUCTION

The opinion of the majority of a panel of this Court reversed a judgment and decree which had found the "Hubbard Electrometer" (E-Meter) to be a misbranded device, and condemned the device under the Food, Drug and Cosmetic Act, 21 U.S.C. 301, 334(a). The government's case rested on the charge that the labeling for the device represented that the E-Meter is useful in the diagnosis, prevention and cure of mental and physical illness, and in improving the intelligence quotient; and represented that the E-Meter will measure basal metabolism, and the "mental state and change of state" of man. The government claimed that the E-Meter was misbranded in that its labeling was false or misleading in so representing; and that the labeling did not contain adequate directions for the use of the E-Meter for its intended purposes.

In reversing, the majority noted that a claimant of several of the E-Meters is a Church, and that part of the Scientological literature relied upon by the government as labeling included a religious "overlay" (slip op. 8-9; see 27). The majority held

that a finding of misbranding could not rest on a finding that "doctrinal religious literature" was false or misleading (slip op. 26, 27). The majority stated that the government had not shown that "auditing services have been peddled to the general public on the basis of wholly non-religious pseudo-scientific representations" (slip. op. 25), thereby indicating that the majority would have affirmed the condemnation of the E-Meter as misbranded if the majority had found that such a showing was made.

Before stating the points upon which the government seeks rehearing and suggests rehearing *en banc*, we believe it appropriate to state the importance of this case. There are two aspects to this. *First*. In our view, the majority of the panel has severely limited the power of the government to deal with false and misleading representations to the public. This is an area not only important under the Food, Drug and Cosmetic Act, but also in connection with other laws that protect the public from false representations. It is important that the question of governmental power to act in the area of pseudo-scientific claims, in the face of a claimed religious defense, be given sensitive and precise treatment. As Judge McGowan said in his dissent, the Food, Drug and Cosmetic Act is "aimed at protecting the unsophisticated against not only wasting their money but, more importantly, endangering their lives by relying upon misbranded machines." (slip op., 28.)

Second. The decision is important in terms of the nationwide and worldwide promotion of the Hubbard E-Meter and its services by means of the medical representations we believe we have shown to be false and misleading. The dimension of this operation is so great, and the consequent hazard to the public of such magnitude (if the government's position is correct), that we believe that for this reason also the decision of the majority involves a "question of exceptional importance." Federal Rules of Appellate Procedure, 35(a). The great scope of this promotion is demonstrated, for example, by the volume of literature that has been generated; by the communications and franchising system shown in the record; and by such claims as "The 'HASI' (Hubbard Association of Scientologists, Interna-

tional) is the world's largest mental health organization and has a dozen practitioners for every one in other mental practices." "*What is Scientology*," Government Exhibit 16, at p. 4.

Our contentions concerning the majority's opinion may be summarized as follows:

1. The record *does* show that the E-Meter was peddled to the general public on the basis of wholly non-religious pseudo-scientific representations.

2. Alternatively: the majority of the panel places a restriction upon governmental power in the area of pseudo-scientific claims which is greater than that demanded by the First Amendment. Where claims are made on a purported scientific basis, and their religious basis is not made plain, the First Amendment does not preclude examination of the truth of the claims.

3. Alternatively: the First Amendment does not prevent inquiring into the truth of representations made for a device, even though the representations are made in literature claimed to be religious, at least where (a) the literature is distributed to members of the general public and promotes the sale to and use of the device by and on members of the general public; (b) the literature makes repeated references to the scientific nature of the device and the scientific verifiability of the representations; (c) the literature represents that the device itself has specific scientific properties; (d) the literature evolved from and incorporates a theory presented as scientific; (e) the literature is used in a highly commercial promotional scheme; (f) a particular methodology, rather than faith, is claimed to effect the benefits promised in the literature.

It is our view that the two positions set forth at 2 and 3, above, are more solicitous of religion than the inquiry, suggested by the majority, whether Scientology is a bona fide religion or whether there is a good faith belief.

If any of the contentions thus stated, 1, 2 or 3, are accepted by the Court, this would result in affirmance of the condemnation of the E-Meter as misbranded. If those contentions are not accepted, we raise additional issues that go to the following: We note that the majority overlooked the fact that the District Judge gave an instruction *limiting* what the jury might consider

as labeling; we argue that there was literature that was not "immune" which properly went to the jury, and which contained false and misleading representations. We also note that it is not clear whether the majority intended that a new trial follow the reversal.

It is important to note that we deal in this petition and suggestion with whether the E-Meter should have been condemned as misbranded. Since the majority does not address itself to the scope of the decree, we do not believe it appropriate to deal with that issue now. That issue is entirely different from the question whether the government properly proved that the E-Meter is a misbranded device. Should rehearing (or rehearing *en banc*) be granted, we would be ready to deal with the question of the scope of the decree at that point, or a later stage, as the Court may wish.

We believe it appropriate to present a statement of the facts pertinent to the issues that we raise.

STATEMENT OF FACTS

i. Dianetics

Beginning in approximately 1947, L. Ron Hubbard wrote tracts elucidating what he called "Dianetics."¹ See, e.g., "*Dianetics: The Modern Science of Mental Health*" (1950), Government Exhibit 26. First publication of an article on Dianetics was in *Astounding Science Fiction*, "A Brief Biography of L. Ron Hubbard," Government Exhibit 14, at p. 8. According to the literature of Dianetics, all the physical pain and painful emotion of a person's lifetime are recorded in a part of the person's mind called the "Reactive Mind." "*Dianetics: The Modern Science of Mental Health*," at xiii. These recordings were called engrams. When the engrams were reactivated they were said to cause illness and aberration. All mental disorders were said to be caused by engrams, and so were all psychosomatic disorders, and that phrase was broadly defined. Slip op. 8; "*Dianetics: The Modern Science of Mental Health*," at 91-108.

¹ Ability 71. Government Exhibit 9ba, at page 12, gives 1947 as the date of publication of "*Dianetics—The Original Thesis*," which is Government Exhibit 94.

Dianetics was presented "as a practical science which can cure many of the ills of man." Slip op. 7. It was not claimed to be a religion.

The literature of Dianetics termed the ordinary person, encumbered by the engrams of the reactive mind, as a "preclear." The goal of the literature was to make persons "clear." A clear was said to be a person who could be tested for any and all psychoses, neuroses, psychosomatic ills, etc., and found free of all such ills; whose intelligence was high above the current norm. "*Dianetics: The Modern Science of Mental Health*," 8.

The process of working toward "clear" was described as "auditing." This process was explicitly described as "therapy" in "*Dianetics: The Modern Science of Mental Health*." In dianetic therapy, the auditor engaged in conversation with the "patient" or preclear, and led the patient along his "time track," discovering and exposing engrams along the way. *Id.*, at xiv, slip op. 8. Through auditing, dianetic therapy promised to cure arthritis, dermatitis, allergies, asthma, some coronary difficulties, eye trouble, bursitis, ulcers, sinusitis, etc.² "*Dianetics: The Modern Science of Mental Health*," at 92.

In 1950, E-Meters were developed as an aid to Dianetics and Dianetic processing. "*The Hubbard Electrometer*," Government Exhibit 9, at 6, 9.

ii. Evolution into Scientology

Subsequent to the appearance of Dianetics, Hubbard wrote tracts setting forth what he called Scientology. These tracts, like the Dianetics literature, stated that engrams cause mental and psychosomatic illnesses. See, e.g., "*Scientology: A History of Man*," Government Exhibit 10, at 13.

In the Scientological literature, as in the Dianetic literature, a pre-clear is the ordinary person, encumbered by engrams. See, e.g., Ability 71, Government Exhibit 9ba, at 11. The literature represents that a person can be made "clear." A clear is said to be a person who can be tested for any and all psychoses, neuroses, psychosomatic ills, etc., and found free of all such ills;

² This was said to be a "very small section of the psychosomatic catalogue."

whose intelligence is high above the current norm. *Id.*, at 3. Pages 3 to 10 of Ability 71 are virtually identical to pages 8 to 17 of "Dianetics: The Modern Science of Mental Health." The terms "Scientologically," and "scientology processing" are substituted for "Dianetically" and "dianetic therapy."

The process of working toward "clear" is described as "auditing" (or processing). "*Scientology, The Fundamentals of Thought*," Government Exhibit 31, at 10; Ability 71, at 20. This process is explicitly described as "therapy" and "therapeutic." "*Sanity for the Layman*," Government Exhibit 21, at 50; "*Scientology, The Evolution of a Science*," Government Exhibit 37, at 48.³ In scientological auditing (or processing or therapy), the auditor engages in conversation with the "patient" or preclear, discovering and exposing engrams along the way. See, e.g., *Scientology, The Fundamentals of Thought*, at 10.

iii. Claims in the literature that Scientology is a science

Just as Dianetics was represented to be a practical and exact science, so Scientology is represented to be "a precise and exact science, designed for an age of exact sciences." "*Scientology, The Fundamentals of Thought*," at 9. The claim is made that "there are no tenets in Scientology which cannot be demonstrated with entirely scientific procedures." *Id.*, at 41. The representation is made that

[t]ens of thousands of case histories (reports on patients, individual records) all sworn to (attested before public officials) are in the possession of the organizations of Scientology. No other subject on earth except physics and chemistry has had such grueling testing (proofs, exact findings). Scientology in the hands of an expert (Auditor) can cure some 70% of Man's illnesses (sicknesses) * * *. It is valid. It has been tested. *Id.*, at 10.

In "*Scientology, The Evolution of a Science*," at p. 7, the statement is made that "the science of Scientology and its results—

³ "*Scientology, The Evolution of a Science*," is virtually identical to "*Dianetics, The Evolution of a Science*," Government Exhibit 29. The latter came first. See "*A Brief Biography of L. Ron Hubbard*," Government Exhibit 14, at 8.

which are as demonstrable as the proposition that water, at 15 lb. per square inch and 212° F. boils—is an engineering science * * *.” See also p. 48 (Scientology “an organized science of thought”).

The claimed scientific basis of Scientology is also stated in “*What is Scientology*,” Government Exhibit 16, at pages 1 to 4:

The laws of this science [Scientology] proved to be startlingly simple when found, well within the grasp of the average person * * *. It is the science of the Man, the Woman and the Child in the street.

Scientology means the “study of knowledge.” Scio is knowing in the fullest sense of the word, and logos, study.

Scientology is today the only successfully validated psychotherapy in the world. Tens of thousands of completely documented cases exist in the files of the Hubbard Association of Scientologists International.

Scientology is a precision science. It is the first precision science in the field of the humanities. Yet it is sufficiently simple and rapid that where it requires twelve years to train a psychiatrist, eight weeks of heavy training can permit a person to achieve results * * *.

* * * [T]he results of Scientology are easily demonstrable claims that can be duplicated at will using Scientology principles correctly.

The first science to prove that I.Q. and intelligence can be improved and are not inherent in a person.*

The first science to determine accurately the honesty and potential character of people by invariable instrument means.

The first mental science to subject itself to the most severe validation tests.

* These and the succeeding passages are claimed “firsts” of Scientology.

The first science to put the cost of psychotherapy within the range of any person's pocketbook. A complete Freudian analysis costs \$8,000 to \$15,000. Better results can be achieved in Scientology for \$25 and, on a group basis for a few dollars.

The first science to make whole classes of backward children averagely bright using only drills the teacher can do a few minutes each day.

The first science to determine the basic cause of disease.

The first science to contain exact technology to routinely alleviate physical illnesses with completely predictable success.

* * * * *

Scientologists do not use drugs or hypnotism. They employ only their exact knowledge of the human mind.

* * * * *

The [Hubbard Association of Scientologists International] is the world's largest mental health organization and has a dozen practitioners for every one in other mental practices.

* * * * *

A highly skilled and experienced Scientologist will give you fast intensive processing daily for a week or as long as you require.

* * * * *

No drugs, hypnotism or psychiatry is used. Only various mental drills that lead you out into life instead of down into the steady grind.

See also, for example, Ability 104M, Government Exhibit 9cf, at p. 3 ("Definition of Scientology: written for Legal use when organizing a Scientological Corporation. Scientology is an organized body of Scientific research knowledge concerning life, life sources and the mind and includes practices that improve the intelligence, state and conduct of persons."); Ability 71, Government Exhibit 9ba, at p. 11 ("The Science

of knowing how to know"); Ability 114, Government Exhibit 9cn, at pp. 4, 6. ("Scientology is the most thoroughly validated science of human behavior in existence today because it requires so little time to prove itself in interested hands." "Scientology is a new word which names a new science.")⁵

iv. Representations concerning the E-Meter

The E-Meter is represented to be indispensable to clearing and auditing. "*E-Meter Essentials 1961*," Government Exhibit 7, at 7 ("There is no known way to clear anyone without using a meter"); "*The Hubbard Electrometer*," Government Exhibit 9, at page 10 ("* * * without the meter [the auditor] cannot get comparable results. One has to be a meter auditor to produce optimum results on meter processes."); "*Scientology: A History of Man*," Government Exhibit 10, at 10 ("If it were not for the E-Meter [the incidents in the book] would have remained undetected except in the haziest state. Without an E-Meter, they cannot be audited with security or even safety for the preclear."); L. Ron Hubbard's PAB's Book II, Government Exhibit 18, at page 25 ("I would no more audit one of these people without an E-Meter than I would use psychiatry on them. * * * Only the response of the needle will tell the auditor whether or not the case is doing anything."); Ability 65, Government Exhibit 9au, at page 7 ("A meter is needed to run clear procedure.").

As stated above, "clearing" means curing, and it means this in the literature of Dianetics as well as Scientology. There are many additional examples of the representation as to the need for E-Meters in clearing. Professional Auditor's Bulletin, March 1961, at page 5 ("If you haven't got an E-Meter, you can't clear people."); Professional Auditor's Bulletin, November 1961, at

⁵In the publications of Scientology, Dianetics is referred to as part of Scientology. For example, Ability 117 refers to Dianetics as "that branch of Scientology which deals with mental anatomy." Government Exhibit 9cq., at 5. Ability 117 refers to dianetics as an "organized science of thought," "a science of the mind." Pages 1, 4. Ability 117 sets forth the first chapter of "*Dianetics: The Modern Science of Mental Health*."

p. 6 ("Auditors who can't run or read a meter * * * can't release or clear anyone."); Professional Auditor's Bulletin, October 1962, Government Exhibit 10J, back cover ("The British Mark IV is the only approved meter for auditing today. This is not a commercial statement. It is a vital fact in clearing.").

In addition to representations that the E-Meter is indispensable in clearing and auditing (and other references that it helps in clearing and auditing), the literature makes other representations about the E-Meter. Thus, "*E-Meter Essentials*," Government Exhibit 7, states:

The meter will also read Basal Metabolism, interesting because it tells you if the preclear really is eating, or has eaten breakfast. [at 18].

The Hubbard Electrometer is an electronic device for measuring the mental state and change of state of Homo Sapiens. [at 6].

The person who says the meter is not a precision instrument is either unfamiliar with one or has something to hide. The auditor's questions can be off. The meter never is. [at 7].

The meter "knows" more about the preclear than the preclear. * * * Hence the omniscience of the meter. [at 23].

Similarly, "*The Hubbard Electrometer*," Government Exhibit 9, states, at page 6:

[The E-Meters] were the first and only instruments capable of measuring the rapid shifts in density of a body under the influence of thought. It measured them well enough to give an auditor a deep and marvelous insight into the mind of his preclears * * *. The nimble needle of the E-Meter can detect with accuracy things which would otherwise be hidden from man forever.

See also Ability 69, Government Exhibit 9ay, at 2 ("A Clear registers an exact number of ohms on an E-Meter according to

present findings."); Professional Auditor's Bulletin, August 1962, Government Exhibit 10I, at p. 9 ("Any meter will register body reactions. Only a specially built meter will also register mental responses.") Professional Auditor's Bulletin, November 1962, Government Exhibit 10K, at p. 12 ("[The New Mark V E-Meter] is as sensitive to mental response as was the proverbial Princess to the pea under her many mattresses.").

The claims for processing with an E-Meter also include claims that the following, *inter alia*, can be cured: arthritis, tuberculosis, toothache, paralysis, anxiety stomachs, cancer, psychosomatic ills, lameness, heart condition, insanity, asthma, sinus trouble, chronic chills (See, e.g., "Scientology: A History of Man," Government Exhibit 10, at 7, 10, 11, 13, 14, 21, 25, 40, 48, 53, 55, 64); neuroses and psychoses, psychosomatic illness (seventy percent of all ills) (See, e.g., "Sanity for the Layman," Government Exhibit 21, at 14, 48, 49, 88; "Scientology 8-80," Government Exhibit 22, at 13, 24, 56, 72). In addition, representations are made that processing with the E-Meter improves the intelligence quotient (see, e.g. Ability 84, Government Exhibit 9bm, at 9-10). In addition to these references, such claims are scattered throughout the literature. See Appendix to Decree, JA 230-270.

v. The religious "overlay"

After the advent of Scientology there came a "religious" "overlay." Cf. slip op., at 8-9. This overlay coexisted with all the representations which we have stated above, regarding the nature of Scientology as an exact science, susceptible of verification by entirely scientific procedures. And, as we have indicated, the Dianetic theories and practices of causation and therapy were embraced as Scientological; Dianetics continued as part of Scientology. The "religious overlay" included the incorporation of the Founding Church of Scientology in the District of Columbia in 1955.⁶

⁶ One of the publications which the majority cites as supporting the religious self-characterization of the movement is "Scientology. The Fundamentals of Thought." Slip. op., at 9. This same publication calls Scientology a "precise and exact science," and represents that there are no tenets of

Scientology did not claim this religious overlay from the outset. See "*L. Ron Hubbard's PAB's Book III*," which states:

There has been some stir amongst auditors concerning the fact that Scientology has allied itself with the Church of American Science, why a Church of Scientology has come into existence and why auditors qualified by training and personal attainments are applying for and have received ordination as ministers in these churches.

To some this seems mere opportunism, to some it would seem that Scientology is simply making itself bulletproof in the eyes of the law, and to some it might appear that any association with religion is a reduction of the ethics and purposes of Scientology itself. The broad majority of those interested have accepted this step, but not all have entirely understood it. [at 14].

* * * *

Our only concern here is with the fact that religion is basically a philosophic teaching designed to better the civilization into which it is taught. Backed fully by the precedent of all the ages concerning teachings, a Scientologist has a better right to call himself a priest, a minister, a missionary, a doctor of divinity, a faith healer or a preacher than any other man who bears the insignia of religion of the western world. And remember that it is precedent which masters the opinion of multitudes and nations.

Why should Scientology ally itself with religion or use the word religion in connection with its philosophy?

Scientology which cannot be demonstrated with entirely scientific procedures. See pp. 9, 41. The majority refers to a claimed kinship between Hubbard's theories and Eastern religions, as expressed in "*L. Ron Hubbard's PAB's, Book III*," at 14-20. Slip. op., 9. At page 15 of Book III, there is the statement that the Vedic Hymns contain "all that is to be found in the works of Charles Darwin and even in the works used today by nuclear physicists." At pages 19-20, it is said: "I do not mean to tell you that Scientology is an extension of the Dharma, or that the forecasts of the Tibetans concerning the western world are now coming true, or that you should embrace Asiatic philosophy, or even that the efforts of the Buddhas and the Scientologists are comparable."

There are many, many reasons. Amongst them is that a society accords to men of the Church an access not given to others. * * * [at 17].

See "*L. Ron Hubbard's PAB's Book 5*," Government Exhibit 20 (at p. 79), in which a Canadian Scientologist explains that "in the U.S.A. Ron has tried the religious approach with good success. If we can 'get it across' on this basis, is there really anything so shocking about it?" See also Ability, Issue 14, Government Exhibit 9L, at page 14:

Scientology is going all out as a religion. The religious aspect is highly functional, very true and is very—much—more successful * * * The public expects to have ministers around. That's us, folks.

* * *

* * * If you don't like religion for heaven's sakes call yourself a Dianeticist.

The Distribution Center, Inc., which sells E-Meters and Scientology literature, would exist and the Scientological movement would exist whether the Church of Scientology existed or not (Tr. 382). The purpose of the Distribution Center is not to further the teachings of the Founding Church of Scientology, but to publish and disseminate the publications of Scientology (JA 99).

Anyone may join the Hubbard Association of Scientologists, International (HASI), whether or not he is a member of or interested in the Founding Church of Scientology (JA 35). No religious belief is required to be a Scientologist (JA 156). The Church is not interested in obtaining converts (JA 36).

vi. Dissemination to the general public—manner and cost

The general public is processed at the Hubbard Guidance Center without any requirement that the individual have any interest in or join the Church (JA 69, 70). Not all persons who audit are ministers (JA 159). There are private practitioners who obtain a franchise from the world-wide Scientology headquarters in England, and who do or do not

have a connection with the Church as they wish (JA 144-5). The Distribution Center, Inc. sells E-Meters and Scientology literature to anyone (JA 67).

Advertising of Scientology, and its literature are directed to the general public. See, e.g. Ability 123, Government Exhibit 9cw, at page 12, which asks for names of groups, friends, relatives, and any source for HASI to send *Ability*. See also JA 125. The literature includes such advertisements as "Sad! Mad! Gad! We don't care *what* your problem is, *we can clear you* at the HUBBARD GUIDANCE CENTER." Ability 72, Government Exhibit 9bc, at 6. "Mr. and Mrs. America. * * * For full details on Processing Intensives contact the Registrar. * * * Wire: Scientology." Ability 82, Government Exhibit 9 bk, at 4.

The retail cost of an E-Meter was \$125 (JA 68); its wholesale cost to the Distribution Center, Inc., was \$47 (JA 71). Auditing was provided at the Hubbard Guidance Center at the rate of \$500 for a 25 hour course. At one time a "Clear Guarantee" was offered for \$5,000. Ability 72, Government Exhibit 9bc, at 6.

The literature sets forth methods by which Scientology may be disseminated. One of these methods begins with the placing of an advertisement in newspapers, which offers personal counseling. "*L. Ron Hubbard's PAB's, Book 5*," Government Exhibit 20. There it states:

If it is the purpose of the minister simply to solve the problem of the preclear * * * phoning, he can, of course, cancel out his clientele with the greatest of ease. This, however, is not the purpose. His purpose is to get this individual into a weekly group processing unit * * *. He should not talk to the person in such a way as to ease the problem. This may be the last problem this person has and it would be a disservice to simply solve it as easily as that. One makes something of the problem, not makes nothing of it. (at 36).

* * * *

Of course it stands to reason that any auditor who has a fairly good sized group which is undergoing free proc-

essing will get from the group many candidates for (1) personal auditing and (2) a basic course in Scientology for which a charge can be made. (at 38).

A second method of obtaining a clientele is to use the "guise of investigation:" illness research, bringing people into auditing by pretending to do research. *Id.*, at 40-42; 45. The third method is to approach people who have been the victim of some casualty. By approaching such persons, a percentage will turn up for group processing, and many of the group will become individual preclears. *Id.*, at 42-44.

ARGUMENT

1. The E-Meter was peddled to the general public on the basis of wholly non-religious pseudo-scientific representations

The record plainly shows that "auditing services have been peddled to the general public on the basis of wholly non-religious pseudo-scientific representations" (Slip Opinion, 25). Scientology is referred to as "a precise and exact science." The claim is made that "tens of thousands of case histories (reports on patients, individual records) all sworn to (attested before public officials) are in the possession of the organizations of Scientology." It is proclaimed that "There are no tenets in Scientology which cannot be demonstrated with entirely scientific procedures." "*Scientology, The Fundamentals of Thought*," at 9, 10, 41. These are prototypical quotations; the literature is replete with such claims. See pp. 6 to 9, *supra*. The claims that were made for Dianetics before Scientology existed were, likewise, scientific; and they involved a peddling of the same general theory of auditing that Scientology sells. (Dianetics continues to exist as a part of Scientology.)

Just as it is plain that wholly non-religious pseudo-scientific representations have been the basis of the peddling, it is also plain that scientology has been peddled to the general public on the basis of such representations. The general public is processed at the Hubbard Guidance Center, and trained to become auditors at the Academy of Scientology, without any requirement

that the individual have any interest in or join the Church (J.A. 69, 70). Not all persons who audit are ministers, and there are auditors who are not connected with the Church, who are practicing Scientology in their own private fashion (J.A. 159). There are private practitioners who obtain their franchises from the world-wide Scientology headquarters in England (J.A. 144-5). And see pages 13 to 14, *supra*, which further reflect that auditing is sold to and by the general public regardless of whether those availing themselves of and offering the services convert to Scientology or affiliate with the Church, or have any religious belief.

Also relevant to this issue is the development of the religious aspect of Scientology. Dianetics was not a religion, and did not claim to be one. It was presented as a "practical science" (Slip Opinion, 7). Scientology developed an "overlay" (Slip Opinion, 8), that purported to be religious, subsequent to its inception. See *supra*, pages 11 to 13. Yet Scientology perpetuated the theory of auditing and therapy that originated with Dianetics; and Dianetics is still part of Scientology. Explicit representations of the scientific and scientifically verifiable nature of the Scientological claims for auditing and for the E-Meter continued to be characteristic and predominant.

It is interesting that the majority speaks of "peddling." One cannot ignore the highly commercial nature of the offering of auditing services. These services were expensive: \$500 for 25 auditing sessions. At one time clearing (curing) was *guaranteed*, for \$5,000. Ability 72, Government Exhibit 9bc, at p. 6. The literature sets forth promotional plans; see, e.g. "*L. Ron Hubbard's PAB's Book 5*," at pp. 34-45, which advises that the "minister" should not solve the problem of the individual responding to an advertisement, but make something of it so that paying "clientele" can be obtained. *Id.*, at 36, 38.

The very use of the word "overlay" in the majority opinion confirms the fact that auditing services have been peddled to the general public on the basis of wholly non-religious pseudo-scientific representations. An overlay is "a covering, esp. one of temporary or removable sort. * * * Ornamental work formed

by overlaying, as with veneer." Webster's New International Dictionary, Second Edition. Notwithstanding the decoration of the Scientological literature with "religious" references, characteristic representations were made that were wholly non-religious and pseudo-scientific. Scientology embraced both the scientific theory and practices of Dianetics, and the literature continued to promote auditing with the E-Meter as a fool-proof scientific system without reliance on faith as a precondition to cure. The panacea is offered to anyone who is willing to pay \$500 for 25 auditing sessions.

2. When claims are made on a purported scientific basis, and their religious basis is not made plain, the First Amendment does not preclude examination of the truth of the claims

It is our position that the record meets the test set up by the majority: The record shows the peddling of auditing services to the general public on the basis of wholly non-religious pseudo-scientific representations (slip op., 25). Alternatively, we submit that the test set up by the majority does not strike a proper balance between the interest of a religion and the public interest in being protected from dangerous, misbranded devices. The First Amendment does not compel the result that the public interest merits protection only where *wholly* non-religious pseudo-scientific representations are made. In this section, we discuss an alternative formulation of a test of the limits of permissible action to remedy misbranding.

The same evidence that we adduced to show the wholly non-religious pseudo-scientific nature of the representations also demonstrates that claims were made for auditing and for the E-Meter on a purported scientific basis, and a religious basis for the claims was not made plain. In such circumstances, the First Amendment does not stand in the way of a court's determining whether the claims are true or false.

The test of government power that is discussed in the preceding paragraph is suggested in Weiss, *Privilege, Posture and Protection—"Religion" in the Law*, 73 Yale L.J. 593, an article

quoted from with approval by the majority of the panel. (Slip Opinion, at 25.) Weiss states:

Can a man legally sell drugs, claiming on the front of the label they cure cancer, and on the back God told him this? * * *

(a) I can misrepresent the results that a given discipline achieves. I can say that water tests out chemically as H_2SO_4 in my laboratory. (b) I can misrepresent what discipline or world perspective I work in. As a layman I can say, "Speaking medically, I will cure you of cancer." Thus fraud may be perpetrated either by misrepresenting what perspective is brought to a problem, or what results obtain therein * * *.

Of course not every claim *touching upon* religion would be protected. A man can misrepresent his authoritative basis—he can fail to make it clear that his claim is based on "religion." If a man simply sells bad drugs and defends on religious grounds, we can find his defense insufficient. For we say: first, you failed to define your claims as religious and they were claims of a nature that would not ordinarily be understood as religious; second, holding yourself out as a drug salesman implied that you spoke with medical authority. To defend now that the drugs you sold were good on religious grounds requires that you must have affirmatively and clearly shown to people at the time of sale that the value of the drugs was rooted in a religious system which they had to affirm in order to perceive that value. If a man pretends to speak with authority he does not have, or acts in such a way as to imply that he speaks with that authority, he is guilty of misrepresentation and fraud. When a man acts publicly in a domain where the normal expectations are of secular contentions, he must make it clear that his claims are made as elements of a faith which describes the nature of things about which he is making the claims. Since the Constitution prohibits defining an

area of belief as "religious," a man must make it clear that the beliefs he represents are "religious," if he wants to be free to express them under the constitutional warrant of freedom of religious belief. He has the burden of communicating that he speaks only from the authority of religion. * * * 73 Yale L.J., at 602-05 (Emphasis in original).⁷

Cf. *People v. Vogelgesang*, 221 N.Y. 290, 116 N.E. 977 (1917) (Cardozo, J.).

In Weiss's terms, the E-Meter was promoted in terms explicitly asserting scientific authority; it was never made plain that the literature spoke only from the authority of religion. To the contrary, the literature speaks in terms of exactness, documented cases, and verification with *entirely* scientific procedure.

Also, it is plain from the scientological literature that the cure and diagnosis are not effected by faith, but by a "scientific" method. There is no nexus between the "faith" and the cure. Indeed, one can be a Scientologist by religion or one can be a Scientologist without any reference at all to religion. One can be cured whether a Scientologist or not.

The presence of an "overlay" of purported religious doctrine in the literature suggests the relevance of cases holding that disclaimers on labeling have never been held to counteract false or misleading claims or intentions for use of the product. See, e.g., *United States v. Millpax, Inc.*, 313 F. 2d 152 (7th Cir., 1953). Where the claims made are overwhelmingly scientific in nature as here, to permit the religious "overlay" to block affirmation of the condemnation of the E-Meter is to ignore that "the problem is a practical one of consumer protection not dialectics." *United States v. Urbeteit*, 335 U.S. 355 (1948).

⁷ We are not asserting that we agree that the government can go no further in regulating misbranding than the outer limits as stated by Weiss. We are asserting that Weiss's formulation plainly provides a basis for affirming the District Court's decree of condemnation.

3. Alternatively: the First Amendment does not prevent inquiry into the truth of representations made for a device even though the representations are made in literature claimed to be religious, at least where (a) the literature is distributed to members of the general public and promotes the sale to and use of the device by and on members of the general public; (b) the literature makes repeated references to the scientific nature of the device and representations, and the scientific verifiability of the representations; (c) the literature represents that the device itself has specific scientific properties; (d) the literature evolved from and incorporates a theory presented as scientific; (e) the literature is used in a highly commercial promotional scheme; (f) a particular methodology, rather than faith, is claimed to effect the benefits promised in the literature

This argument is offered as an alternative basis to sustain the condemnation of the E-Meter. The factual predicates of the argument, (a) through (f), are documented in the statement of facts, with accompanying record references, at pages 4 to 15, *supra*. At least in these circumstances, we submit that the First Amendment does not foreclose inquiry into the truth of the representations made in the literature accompanying the E-Meter. The purpose of the Food, Drug and Cosmetic Act, together with the high degree of danger to the public presented by the use of the E-Meter, demonstrates the compelling state interest in condemning these devices, if misbranded. We believe that the state interest that was held to override the individual's right to practice his religion in such cases as *Reynolds v. United States*, 98 U.S. 145 (1878) (polygamous marriage), and *Prince v. Massachusetts*, 321 U.S. 158 (1943), was far less significant than the state interest here.

We may draw a profitable analogy to another First Amendment right, freedom of speech. Let us suppose a person writes a book setting forth the theory that a certain kind of device can cure a disease. The book is sold in book stores. Let us assume that the book is protected by the First Amendment. Then he uses the book to "accompany" the device. Or let us suppose that another person uses the book to accompany the device. In either event, the Government plainly has the right to prove

the falseness of the representations in the book. See, e.g., *United States v. 250 Jars * * * Honey*, 344 F. 2d 288 (6th Cir., 1965); *United States v. "Toddlers Vitamins,"* 32 F.R.D. 32 (S.D. Ill., 1963). In the latter case, the Court held that the First Amendment rights of the author of the book are not violated by condemnation of the book when it is used as prohibited labeling. The author of the book had the right to say what he said in the book, but the government had the right to act when the book was used as labeling. So here, the Government had the right to prove the falseness of assertions made in "written, printed, or graphic matter * * * accompanying" the E-Meter. Cf. the dissenting opinion of Judge McGowan, at 28 to 29.

The same First Amendment that protects freedom of religion also protects freedom of speech. The state has a right to prove the falseness of a representation for a device made in accompanying literature when the literature derives from a scientific belief. The state should have the same right when the literature is claimed to derive from a religious belief, at least in the circumstances in this case. For example, no religious interest protected by the First Amendment is infringed by evaluating the truth of representations made for the E-Meter and for auditing with the E-Meter, where the literature states that its claims are verifiable by entirely scientific procedures (see e.g., *"Scientology, The Fundamentals of Thought,"* Government Exhibit 31, at p. 41); and where specific claims are made for the E-Meter, such as its power to read basal metabolism, its ability to measure the "mental state and change of state" of man, its indispensability in clearing (curing) (*"E-Meter Essentials,"* Government Exhibit 7, at 6, 7, and 18), and its use in improving the intelligence quotient (see, e.g., Ability 84, Government Exhibit 9bm, at pages 9-10).

4. The "Weiss" test, and the alternative position dealt with in part 3, above, are more solicitous of religion than an inquiry into whether this is a religion or whether there is a good faith belief

Under the "Weiss" test, representations for a device are subject to challenge where they appear to claim a scientific basis.

The Court is not, under that test, required to ascertain whether what is claimed to be a religion is actually a religion. The Court makes an objective determination of the purported basis for the claims, and evaluates on a scientific basis claims made on a scientific basis. To take such an approach is more solicitous of religion than to inquire whether the purported religion is a religion.

Similarly, the Weiss test is more solicitous than to inquire into the good faith of those asserting a religious belief. Indeed, Justice Jackson questioned this practice in his dissent in *United States v. Ballard*, 322 U.S. 70 (1944).

We submit that an evaluation of the truth of the representations in the literature is more considerate of the First Amendment than to ask whether Scientology practitioners are truly religious or in good faith. This is particularly true when we recognize that the claimants are not on trial; the E-Meter is on trial. Whose good faith would one look to, under the majority's theory? L. Ron Hubbard? A majority of the individual claimants? John Fudge?

The government is not seeking to inquire into anyone's religious beliefs. The government is asserting that there is a compelling state interest in determining whether the representations in the literature accompanying the E-Meter are false or misleading. The intent, good faith, ignorance, or awareness of wrongdoing of a claimant is not relevant to the issues. *Research Laboratories, Inc. v. United States*, 167 F. 2d 410 (9th Cir., 1948), cert. den. 335 U.S. 843 (1948).

5. The majority recognized that not all the literature is religious, and that some is labeling, but failed to take into account the District Court's limiting instruction^{*}

It is first necessary to point out that *all* relevant sources can be considered by the jury in determining whether an instrument is a device. *United States v. Articles of Drug* * * *

^{*} If the Court accepts any of the first three contentions herein, it does not have to reach this part in determining whether the E-Meter should have been condemned.

Foods Plus, 362 F. 2d 932 (3rd Cir., 1966). Items that are not labeling can be considered in determining whether an instrument is a device.

The majority of the panel does not state that it was improper for the jury to consider all the literature in determining whether the E-Meter was a device. Nor does the rationale of the decision result in a conclusion that it was improper for the jury to do so. This is because the determination whether the E-Meter is a device does not involve a determination of truth or falsity of representations. The determination whether the E-Meter is a device involves a determination whether the intended use of the E-Meter was in curing disease. It follows that the majority erred in faulting the fact that the jury's attention was directed to passages describing the theories of Scientology as they relate to auditing and claiming curative powers for that process (Slip op. 26). It was perfectly proper for the jury to consider those passages to determine the intended use of the E-Meter. The claimants contended that the E-Meter was not intended for use in the cure of disease; the government contended that it was.

The next question, then, is what constitutes labeling for this device. The majority of the panel holds that the question of whether a publication is labeling turns on whether it is religious doctrine. The statute defines labeling as "labels and other written, printed, or graphic matter (1) upon any article or any of its containers or wrappers, or (2) accompanying such article." 21 U.S.C. § 321(m). We submit that the First Amendment cannot be violated by a determination that a pamphlet is labeling. The word labeling is neutral. The Court may wish to hold that religious labeling cannot be subject to an evaluation for truthfulness, but logical analysis is not advanced by saying that a pamphlet is not labeling because it is religious. Suppose a religion attached a pamphlet containing religious doctrine to a device. There is no reason one cannot call it labeling. To call it labeling is not to call it heresy. If the pamphlet is not labeling, how can the labeling contain adequate directions for use?

The majority overlooks the fact that the District Court gave a limiting instruction to the jury concerning labeling (Tr. 1542-43):

Now, you are instructed also that the term, "labeling," does not necessarily include every writing which bears some relation to the Hubbard Electrometer or Hubbard E-Meter.

You are instructed that a particular piece of literature cannot be considered as "labeling" for the meters if

(1) It was written before the existence of the Hubbard Electrometer or Hubbard E-Meter; or,

(2) It makes no direct or indirect reference to the Hubbard Electrometer or Hubbard E-Meter; or,

(3) If its references to such meters are not an integral part of the textual material presented in such literature.

In other words, if the reference to such meters is only contained in an attached price list or book list or list of other publications at the back of one of the documents admitted into evidence, then that will not constitute labeling for the Hubbard Electrometer or Hubbard E-Meter.⁹

In addition, the majority does not hold that all the literature of Scientology is religious doctrine immune from the Act (slip op. 27). Putting these two facts together, we believe that it was incumbent upon the Court to determine whether the publications which the jury was permitted to consider as labeling were religious doctrine. For example, "*E-Meter Essentials*" could hardly qualify as religious doctrine.

A further relevant consideration results from the fact that Scientology evolved from Dianetics. Dianetics was not a religion. But the auditing process and basic scientological doctrine were already existent in Dianetics. (Note that "*Dianetics, the Evolution of Science*" and "*Scientology The Evolution of a Science*" are identical almost to the word.) To the extent that publications of Scientology adopt material in Dianetics publica-

⁹ The government believes that this instruction restricted the definition of labeling unduly. However, the case did go to the jury on this instruction, over the government's objection.

tions, we submit that the material cannot be deemed immune religious literature. For example, Ability 71 reproduces a chapter of "*Dianetics: The Modern Science of Mental Health*," "Being Clear and How to Get There." This chapter states that "a clear can be tested for all psychoses, neuroses, compulsions and repressions (all aberrations) and can be examined for any autogenic (self-generated) diseases referred to as psychosomatic ills. These tests confirm the clear to be entirely without such ills or aberrations."

Aside from the fact that the jury must be presumed to have followed the Court's instruction, the notes from the jury indicate that the instruction was followed (J.A. 221). The jury asked for, *inter alia*, "*E-Meter Essentials*," Ability magazines that deal with the use and effect of the Hubbard E-Meter, and the Book on Dianetics. The first two of these requested items appear to reflect the instruction on "labeling," while the third appears to reflect the instruction on "device."¹⁰

6. Even if the District Judge was not restrictive enough in defining labeling, this was harmless error¹¹

The jury verdict in this case stands for the proposition that the E-Meter is a device. There was literature in this case that was not religious doctrine and was labeling. A reasonable man would have had to find that such labeling made representations about the E-Meter that were false and misleading. Therefore the District Court's judgment condemning the E-Meter should be affirmed.¹²

¹⁰ Contrary to the majority's assertion that the government did not stress "*E-Meter Essentials*" (slip op. 20), the government stressed the book enough so that the jury asked for it in its first note, and asked for the book that deals with the statement that the E-Meter can read basal metabolism in its second note.

¹¹ This part and part 7 need not be reached if the Court accepts the contentions in any of the first three sections.

¹² Moreover, the evidence in the case was such that each element of the government's case—that the E-Meter was a device and that it was accompanied by labeling (not religious doctrine) which was false or misleading—was such that the government's motion for a directed verdict should have been granted. It is important to note, in this connection, that if the labeling is false or misleading in *any particular*, the E-Meter must be condemned. It must be condemned if its labeling does not contain adequate directions for use. 21 U.S.C. § 352 (a), (f).

7. The majority's decision is unclear in that it doesn't indicate whether a new trial is to follow

Since the majority states that it is not holding that all the publications of Scientology are immune, it would seem that the majority intended a new trial to follow. The government could, on a new trial, presumably use all the literature to attempt to prove "device," and could use "non-immune" literature to prove misbranding. However, the majority leaves undefined the manner in which the immune literature is to be distinguished from the non-immune.

Moreover, it appears that a new trial was to follow because the majority leaves open the possibility that the government may be entitled to prove lack of adequate directions for use. Slip Opinion, at 27.

If the Court adheres to the decision of the majority, we would maintain that it should be open on the new trial for the government to prove that Scientology is not a *bona fide* religion, that the beliefs asserted to be religious are not held in good faith by those asserting them, that forms of religious organization were erected for the purpose of cloaking a secular enterprise with the legal protections of religion. While the record contains evidence that Scientology claimed to be a religion, it also contains evidence to support, if not compel, a conclusion that the religion was not *bona fide*, that the beliefs asserted to be religious were not held in good faith, and that the forms of religion were erected for the purpose of cloaking a secular enterprise with the protection of religion. See pages 11 to 13, *supra*. (We note that claimants did not ask for an instruction that the jury determine whether or not they are a *bona fide* religion, nor did they ask for an instruction looking to their good faith.)

CONCLUSION

Based on the foregoing, we submit that the record shows that Scientology is peddled to the general public on the basis of wholly non-religious pseudo-scientific representations. Moreover, in our view the majority gives too much, and inappropriate effect to the fact that claimants purport to be religious. The opinion of the majority, in curtailing the power of the govern-

ment to protect the public, devises a standard more onerous than that demanded by the First Amendment. False and misleading pseudo-scientific representations can be dangerous, even though they may "touch upon" religion; and the representations in this case present a substantial danger, which the state has a right to avert. Therefore, we respectfully petition for rehearing and suggest that this case be reheard *en banc*.

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